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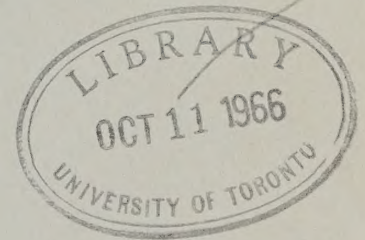
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Report. 1966.

Commissioner: Mr. Justice Wishart
Flett Spence.



REPORT
OF THE
COMMISSION OF INQUIRY
INTO MATTERS RELATING TO
ONE GERDA MUNSINGER

The Honourable
Mr. Justice Wishart Flett Spence
Commissioner



SEPTEMBER 1966



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OF THE
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SEPTEMBER 1966

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1966

Ottawa, September 1966.

TO HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL:

MAY IT PLEASE YOUR EXCELLENCY,

As Commissioner appointed in accordance with the
terms of Order in Council P. C. 1966-482 of the
Fourteenth of March 1966,

I BEG TO SUBMIT TO YOUR EXCELLENCY

THIS REPORT

Robert F. Spence

Commissioner

COMMISSION OF INQUIRY INTO MATTERS
RELATING TO ONE GERDA MUNSINGER

COMMISSIONER

The Honourable Mr. Justice Wishart F. Spence

J. J. Pierre Benoit
Secretary and Registrar

John L. O'Brien, Q.C.
Counsel

H. A. Wilson
Executive Secretary and
Security Officer


John J. Urie, Q.C.
Associate Counsel

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1. Introduction

This Commission, under the terms of reference set out in Order in Council P.C. 1966-482 (printed in full as Appendix 1 to this Report), is required "to inquire fully into a statement by the Minister of Justice in a letter dated March 11, 1966, to the Prime Minister, with reference to a case involving one Gerda Munsinger, which was read in the House of Commons on March 11, 1966; into all statements concerning the case in the House of Commons on March 4 and March 7, 1966; and into all statements by the Minister of Justice in a press conference on March 10, 1966, which, among other things, included statements about involvement with the said Gerda Munsinger, about failure to seek the advice of the Law Officers of the Department of Justice, that there were circumstances that may have constituted a risk to the security of Canada and that the case was not properly handled; and to enquire whether the case was handled in accordance with the rules and principles normally applicable to persons having access to classified information, and into all the relevant circumstances connected therewith, and in particular, but without limiting the generality of the foregoing, to consider fully all reports submitted to the government or any member of the government of the day and any evidence laid before them in connection therewith and any further evidence elicited by or laid before the Commissioner and to consider such other matters as may appear to the Commissioner to be relevant and to report thereon".

It will be seen, therefore, that my main task as Commissioner is to determine whether "the case was handled in accordance with the rules and principles normally applicable to persons having access to classified information", although various other and related matters are also referred to this Commission.

Upon my appointment, and in accordance with powers granted in paragraph 4 of the Privy Council Order, I proceeded to appoint as counsel for the Commission, Mr. John L. O'Brien, Q.C., and Mr. John J. Urie, Q.C. I also appointed Mr. J. P. P. Benoit, Secretary and Registrar, and Mr. H. A. Wilson, Executive Secretary and Security Officer. I arranged for secretarial and clerical assistance, and for the reporting of hearings by Mr. John Chapman, C.S.R., of Angus, Stonehouse & Co. Ltd.

After conference with counsel for the Commission, and for the reasons outlined hereafter in Section 15 entitled "Procedure in Reference to the Commission", I determined to hold an in camera session of the Commission. At that in camera session, which took place on April 6, 1966, there were produced and filed as Exhibits 8, 9 and 10, certain reports of the Royal Canadian Mounted Police. These reports were then synopsisized by the aforesaid counsel and that synopsis was later produced and marked as Exhibit 20.

Thereafter, sessions of the Commission were convened as follows:

April 18, 1966	in public
April 18, 1966	in camera
April 25, 1966	in public
April 27, 1966	in public
April 28, 1966	in public
May 9, 1966	in public
May 10, 1966	in public
May 10, 1966	in camera

May 18, 1966	in public
May 19, 1966	in camera
May 19, 1966	in public
May 24, 1966	in public

The in camera sessions after that of April 6, 1966, were very short; indeed, the transcript of proceedings thereat only required a few pages.

At the sessions of the Commission, evidence was adduced to reveal a set of circumstances which may be very tersely, yet I believe accurately, summarized as follows:

On June 28, 1960, one Gerda Munsinger applied to the Canadian Citizenship Court for Canadian citizenship. In accordance with the standard routine in such cases, her application was referred to the R.C.M.P. for security clearance. On July 11, 1960, that Force commenced its investigation of the applicant, which investigation culminated in the discovery that Gerda Munsinger had had such a checkered career and apparently had become associated with one or more Members of the Cabinet, that a report thereof reached the desk of the then Prime Minister, The Right Honourable John G. Diefenbaker.

The reports of the R.C.M.P., insofar as they dealt with that Force's investigation up to February 5, 1961, were filed as Exhibits 8 and 9 and synopsised in Exhibit 20, to which I have referred above, and these reports may be shortly summarized as follows:

The application for citizenship filed by Mrs. Munsinger disclosed that her maiden name was Gerda Heseler. Early in the R.C.M.P. investigation it was discovered that that name was the subject of a "warning card" showing that Gerda Heseler

had been refused a visa for immigration to Canada in 1952. The investigation which had led up to that rejection disclosed that the then Miss Heseler was a self-admitted espionage agent and, moreover, that she had a record of convictions as a common prostitute, a petty thief and a smuggler. Such a record indicated that Gerda Heseler, as she then was, could very easily betray those who trusted her. When employed as a maid in the home of a British Army captain in 1947, she seized upon the opportunity provided when he departed on leave, entrusting the household to her, to steal a quantity of clothing belonging to the captain's wife. Again, in 1949, at the command of one of her superiors in espionage work, she rifled the pockets of a United States Army private who had befriended her, and stole from him the considerable sum of 1000 German marks. These are but a few examples to illustrate why the R.C.M.P. had concluded and reported that the former Gerda Heseler was a thoroughly unreliable opportunist and that "the sense of values developed by many of these girls demanded a 'protector', preferably a prominent person of means with whom they could associate themselves".

Mrs. Munsinger's espionage activities, the R.C.M.P. reports reveal, had been of a minor character but had included contact over a considerable period with a major in the Russian Intelligence Service and the carrying out of several missions upon the latter's instructions. There was no evidence that

she had not carried out, with equal success, other more difficult missions.

Notwithstanding her previous rejection, Mrs. Munsinger gained entry to Canada in 1955, by the use of her married name. This I shall discuss when dealing with the Department of Citizenship and Immigration.

Following her arrival in Canada, Mrs. Munsinger was required to work as a domestic for one year, this having been a term of the grant to her of an Assisted Passage Loan. Further investigation of the Citizenship and Immigration file, marked as Exhibit 27, revealed that, after her arrival in Canada, Mrs. Munsinger paid back a part only of the Assisted Passage Loan and continuous efforts of the Department of Citizenship and Immigration to collect the balance were unsuccessful until November 1960, when the fact that she had applied for citizenship permitted the Immigration Branch of that Department to locate her and collect the balance in one lump payment.

Mrs. Munsinger's application for citizenship revealed that, since her arrival in Canada in August 1955, aboard the S.S. "Arosa Sun", she had visited Panama and Colombia from November 8, 1958 to July 3, 1959, and during that time had visited Mexico. The application also indicated that she had visited West Germany and Austria for three weeks commencing on January 8, 1958 and again from February 8 to March 9, 1960.

Mrs. Munsinger was interviewed by the R.C.M.P. on November 15 and November 16, 1960 and was kept under very close surveillance from about that date until her final departure for Germany on February 5, 1961.

From her interviews, and as a result of this surveillance, it was determined that Mrs. Munsinger had worked as a hostess and cashier at various night clubs in Montreal, which were operated by well-known racketeers and persons who had some association with various operators in the narcotics racket. She was, moreover, during this period engaged in an active career of prostitution and had as her companions, and apparent confidantes, other women in Montreal who were engaged in the same practice.

It appeared that Gerda Heseler had been born in that part of Germany which is now in the East Sector and where her parents resided at the time. Her father had been, prior to 1939, a teacher in the KPD school at Konigsberg. The initials KPD are an abbreviation for Kommunist Partische Deutschland, i.e., the German Communist Party.

Following the rejection in 1952 of her application for entry into Canada, Gerda Heseler had married a United States Army sergeant named Michael Munsinger. Her husband had returned to the United States shortly after the marriage but had failed to obtain the entry into the United States of his wife, although he had enlisted the support of a lawyer and

a United States senator. Michael Munsinger had then obtained a divorce from his wife in a court in Alabama on October 14, 1954. At that time, Gerda Munsinger was not in Alabama and never succeeded in obtaining entry to the United States prior to her entry into Canada as a landed immigrant.

Immediately upon her interview by the R.C.M.P., and as a result of their observations thereafter, the R.C.M.P. were convinced that Mrs. Munsinger was having illicit sexual relations with The Honourable Pierre Sevigny and, in their report, the R.C.M.P. described her as The Honourable Mr. Sevigny's "mistress". This liaison between The Honourable Mr. Sevigny and Mrs. Munsinger was known to her fellow prostitutes and was the subject of some discussion amongst them.

It was also determined that Mrs. Munsinger was acquainted with Mr. Gaston Levesque, The Honourable Mr. Sevigny's Executive Assistant, and that he had not only received messages and telephone calls from her for his Minister but had intervened for her on several occasions in reference to her application for citizenship. This matter will be discussed later when I deal with The Honourable Mr. Sevigny and with Mr. Levesque.

Mrs. Munsinger had also boasted that she was acquainted with other Cabinet Ministers and had given the names of

The Honourable George H. Hees and The Honourable Ellen Fairclough. In discussion with a friend, she had stated that her application for employment in the Canadian Embassy in Bonn would be furthered by The Honourable Mr. Hees. It should be noted that no trace of that application has been found and no trace of any connection therewith by The Honourable Mr. Hees has been found.

The R.C.M.P. reports show that the office of a company, which had business associations with Soviet Bloc countries, was located in the same building in which Mrs. Munsinger resided in Montreal, and that Mrs. Munsinger had a part-time position as a bookkeeper for the building. This position would enable her to go from place to place within the building without question.

Much more detail was included in the R.C.M.P. reports and was also outlined in the said Exhibit 20, but it need not be set out in this synopsis.

Insofar as Exhibit 20 deals with matters known to the R.C.M.P. up to December 7, 1960, such information was given on that day to The Honourable E. D. Fulton, then Minister of Justice, by the then Commissioner of the R.C.M.P., C. W. Harvison, and his Deputy Commissioner, J. B. McClellan. Such information was later reduced to a written report and that report delivered to the said Minister on December 12, 1960. I shall discuss the documentation hereafter. The factor which precipitated the report by the two R.C.M.P. officers to their Minister on December 7, 1960,

was that information had come from their staff in Montreal that Mrs. Munsinger's liaison with a Cabinet Minister was known to her questionable associates in Montreal and to the local police. The R.C.M.P. officers, in their evidence, outlined three dangers to national security, which might have then existed:

- (a) That Mrs. Munsinger might have been despatched to Canada by Russian Intelligence agents to carry out espionage work. The circumstance that no evidence had been uncovered to confirm this possibility by no means ruled it out.
- (b) That, even if Mrs. Munsinger had come to Canada of her own volition and had intended to carry on as an ordinary immigrant, her past association with Russian espionage made her a likely subject for re-recruitment by them for resumption of such duties.
- (c) That Mrs. Munsinger, and those who associated with her, were vulnerable to blackmail by underworld characters, particularly in Montreal, where her liaison with a prominent person was common knowledge in the underworld.

Immediately following the departure of the two R.C.M.P. officers from his office on December 12 or 13, The Honourable Mr. Fulton arranged to see the then Prime Minister, The Right Honourable J. G. Diefenbaker and, in fact, did see him on the afternoon of the same day, at which time he gave him a short oral report on the situation and left with him the report which had been left by the R.C.M.P. Commissioner. The following day, he returned to the Prime Minister's office. The Honourable Mr. Sevigny was summoned to

the meeting, and upon questioning by the Prime Minister, according to The Honourable Mr. Fulton, The Honourable Mr. Sevigny denied any improper relations with Mrs. Munsinger. The Honourable Mr. Sevigny testified, however, that he did not deny that he had had a physical relationship with Mrs. Munsinger but merely kept silent, although he did deny to the Prime Minister that Mrs. Munsinger had been his "mistress" as she had been described in the R.C.M.P. report. In any event, the Prime Minister was, to quote The Honourable Mr. Fulton, "not interested in explanations" and told The Honourable Mr. Sevigny that he was concerned about the situation that had been created and that the relationship with Mrs. Munsinger must end and he be satisfied that no breach of security had occurred. The Honourable Mr. Sevigny had stated that he did not understand why such a serious view was taken of the relationship since The Honourable Mr. George Hees knew her too. The Honourable Mr. Fulton pointed out that the R.C.M.P. report had indicated that The Honourable Mr. Hees' relationship consisted of his seeing her in public on two occasions, unlike the much closer relationship the R.C.M.P. knew to exist between The Honourable Mr. Sevigny and Mrs. Munsinger.

The Honourable Mr. Sevigny told the Prime Minister that she was going to leave the country and that he was prepared to accept the Prime Minister's instructions to discontinue his relationship. Until he reported the final departure of Mrs. Munsinger from Canada in February 1961, The Honourable Mr. Fulton apparently did not discuss the matter further with the Prime Minister or with any other member of Cabinet, except one unidentified member to whom he reported the situation so that someone else would have the date and circumstances in his mind if anything further came of it. He did not recall making any further inquiries in respect of the allegations

contained in the report, either from the R.C.M.P. or from other sources, nor did he, he testified, give any instructions to the Department of Citizenship and Immigration. So far as he was aware, the Prime Minister did not take any further action either.

Mrs. Munsinger departed for Germany for a visit on December 17, 1960, and returned to Canada from her holiday in January 1961, only to make her final departure from the country on February 5, 1961. This fact was, in due course, conveyed by the R.C.M.P. to The Honourable Mr. Fulton and through him to the Prime Minister.

Other testimony during the course of the hearings showed that The Honourable Mr. Sevigny had, in September and October of 1960, through his Executive Assistant, made inquiries and representations on behalf of Mrs. Munsinger to the Department of Citizenship and Immigration in connection with her application for citizenship. In addition, he admitted having had a member of his staff, in November 1960, see the German Consulate to attempt to obtain revalidation of Mrs. Munsinger's German passport. He also admitted spending the night of November 26 and 27 in her Tower Street apartment in Montreal, although he denied any impropriety since, through great fatigue, he had slept all night. He had also seen her, together with Miss Jacqueline Delorme, in Montreal on November 13, 1960, at which time he found her to be in a very bad physical and mental state, as was the case on his visit of November 26, 1960. Other reports indicate that her health was sufficiently robust that she was able to conduct a very active business in prostitution, had taken at least one trip to Ottawa, early in December went on a four-day trip to western Canada with a male friend, took a three-week holiday trip to Europe later that month with yet

another male friend, and generally led an extremely active round of social activities in Montreal. The Honourable Mr. Sevigny, however, testified that during the period from January 1960 to November 1960 he saw her only three or four times. Mr. Gaston Levesque, the Executive Assistant, testified that he had seen Mrs. Munsinger on four occasions and had talked to her on the telephone on others. On three of the occasions The Honourable Mr. Sevigny was with him. The representations he made to the Citizenship Branch were all made on the instructions of The Honourable Mr. Sevigny. It was not until December 1960, after The Honourable Mr. Sevigny saw the Prime Minister, that he instructed Mr. Levesque not to put any telephone calls from Mrs. Munsinger through to him.

The Honourable Mr. Sevigny's testimony that on November 13, 1960, Mrs. Munsinger expressed an urgent desire to return to Germany permanently is to some extent contradicted by a letter from her in the Citizenship file, dated November 26, 1960, inquiring on the progress of her citizenship application, as well as by the uncontradicted evidence that she had the opportunity to return permanently to Europe on her trip in December 1960, but did not do so and, in fact, by her actions demonstrated that she neither expected nor wished to do so.

After the evidence which I have outlined and other evidence with which I shall deal hereafter had been adduced, counsel for this Commission, Mr. O'Brien, Q.C., and Mr. Urie, Q.C., made a joint presentation in reference thereto and commented on the matters referred to the Commission. This submission was followed by those of Mr. A. J. Campbell, Q.C., representing The Honourable Lucien Cardin; Mr. E. A. Goodman, Q.C., representing The Honourable George H. Hees; and Mr. Jules Dupré, Q.C., representing The Honourable Pierre Sevigny. Mr. Campbell and Mr. O'Brien made short replies.

At the commencement of the session on May 18, Mr. C.F.H. Carson, Q.C., had announced that he and his co-counsel, Mr. C.L. Dubin, Q.C., and Mr. J.R. Houston, had been instructed by their clients, The Right Honourable John G. Diefenbaker and The Honourable E. D. Fulton, not to participate further in the hearings and to withdraw therefrom. This Commission, therefore, regrettably was deprived of the opportunity to hear the submissions of these learned counsel. Such counsel, however, had participated fully in the proceedings of this Commission prior to May 18, 1966.

I considered the above submissions and the provisions of Section 13 of the Inquiries Act, R.S.C. 1952, chapter 154, which provides:

" 13. No report shall be made against any person until reasonable notice has been given to him of the charge of misconduct alleged against him and he has been allowed full opportunity to be heard in person or by counsel."

I chose to interpret the words "the charge of misconduct alleged against him" in the broadest sense to cover even allegations "that the case was not properly handled" or that the case was not "handled in accordance with the rules and principles normally applicable to persons having access to classified information". I quote from the terms of the Privy Council Order. It appeared that the proper and fairest method of complying with Section 13 of the Inquiries Act was to recite to each person the criticism of such person made by any counsel in argument. These criticisms and any reply by such person or counsel for such person I would then consider in coming to my conclusion as to whether they constituted allegations of misconduct and as to whether such allegations were supported and should be made the subject of my Report. I, therefore, drafted notices in the form of letters which I addressed to each of the following:

The Right Honourable John G. Diefenbaker,

The Honourable E. Davie Fulton,

Mr. E. A. Goodman, Q.C., representing The Honourable George H. Hees,

Mr. Jules Dupré, Q.C., representing The Honourable Pierre Sevigny,

Mr. A. J. Campbell, Q.C., representing The Honourable Lucien Cardin.

Each notice outlined the charge of misconduct which had been made against each of these Honourable Gentlemen in the aforesaid submissions. In such letters I referred to the provisions of Section 13, quoted aforesaid, and fixed the date of June 15, 1966, by which each was to notify this Commission if they wished to be heard further thereon, in person or by counsel. It must be noted that such notice was given to The Right Honourable John G. Diefenbaker and The Honourable E. Davie Fulton despite their counsel's announcement and withdrawal on May 18, 1966, as I have above recounted. In my view, no charges of any substance were made in the evidence or submissions of counsel as to any other person.

Mr. Goodman, on behalf of The Honourable Mr. Hees, replied by his letter of June 10, 1966, that he required no further opportunity to be heard. Mr. Campbell replied by his letter of June 9, 1966, in a similar vein. The Right Honourable Mr. Diefenbaker did not reply. Both The Honourable Mr. Fulton, personally, and Mr. Dupré on behalf of The Honourable Mr. Sevigny, replied. The former replied at great length in a letter which, with mine, he immediately released to the press. Both of the latter replies outlined the contention that under Section 13 of the Inquiries Act it was my duty to state certain specific charges of misconduct which I intended to find against the person notified. Whatever may be the situation when the Commissioner is one acting without counsel or under Part II of the

Inquiries Act, I was and still am strongly of the opinion that such an interpretation of the direction in Section 13 is incorrect when one considers the position of a Commissioner acting with counsel and hearing, not only the evidence as produced by counsel for the Commission, and as made the subject of cross-examination by counsel for all interested parties, but also argument in full from all such counsel who desired to address the Commission. I am further of the opinion that, to notify each such person or his counsel of the allegations of misconduct made against him by counsel and to permit such further submissions as each person desired to make, was a much fairer and more judicial procedure than the indictment type advocated in those two replies. Since The Honourable Mr. Fulton had stated clearly his intention of not appearing further, I simply acknowledged his letter. In my notice to Mr. Dupré I had merely referred to the evidence and argument by volume and page number since Mr. Dupré had been present at each session of the Commission, had examined and cross-examined witnesses extensively and had made submissions at length on behalf of his client. In view of Mr. Dupré's reply, therefore, and in view of the fact that my previous letter had only mentioned the evidence and argument by reference to volume and page number and had not quoted it, I wrote to him again and in two short paragraphs summarized the principal "charges of misconduct" alleged by other counsel against his client. I requested Mr. Dupré to notify me by June 21, 1966, if he desired to make further submissions. By his letter of June 24, 1966, Mr. Dupré re-stated his submissions made in oral argument but stated he had no further submissions to make at another hearing. Therefore, the Commission held no further hearings.

As I have already said, in my view, my main task as Commissioner

was to determine whether the proper decisions were made by the Government of the day upon receipt of the reports of the R.C.M.P. It was clear from the evidence given by The Honourable E. D. Fulton that he accepted such reports at their face value and communicated them to The Right Honourable John G. Diefenbaker, the then Prime Minister, on the basis that they constituted a valid outline of the information available in the hands of the R.C.M.P. It will be seen, therefore, that the then Prime Minister was confronted with decisions as to whether there had been (a) a breach of security and/or (b) a security risk.

It therefore becomes necessary to define a "security breach" and a "security risk". For the purposes of this Report, the word "security" must be understood to indicate the measures used to prevent, or at least hinder, the obtaining of classified information by persons who are agents of any foreign power or who are, or may be, in contact with such agents. A "security breach", therefore, occurs when such persons are permitted to obtain such information. A "security risk", on the other hand, is created when such persons might be able to obtain such information. Security may be placed in jeopardy either by persons who are disloyal or by persons who are, or may become, unreliable because of defects in their character. I make the statement at once that there is no scintilla of evidence or any indication that there was any disloyalty involved in any of the circumstances which I have investigated.

The Cabinet Directive in effect at the relevant period was Cabinet Directive No. 29 which had been issued on December 21, 1955. Such Cabinet Directive was marked as Exhibit 11; paragraph 4 thereof reads:

" It also remains an essential of Canadian security policy that persons who are unreliable from a security standpoint, not because they are disloyal, but because of defects in their character which may lead to indiscretion or dishonesty, or may make them likely subjects of blackmail, must not be employed in any position where they may have access to classified information. Such defects of character may also make them unsuitable for employment on grounds other than security."

Such a statement is repeated in subsequent Cabinet Directives, but I have chosen that one actually in effect at the relevant time.

So far as the main task of this Commission is concerned, therefore, it is my intention to deal with the course of conduct adopted by the various persons hereunder named, with particular reference to the problem of "security breach" and "security risk". The subsidiary portions of the reference to me in this Commission, i.e., those which deal with statements in the House of Commons on March 4 and 7, 1966, statements by The Honourable the Minister of Justice in a press conference on March 10, 1966, and statements in a letter by the Minister of Justice written to the Prime Minister on March 11, 1966, I shall also refer to in the following paragraphs dealing with the persons named at the head of such paragraphs.

It may be said, and indeed I could not fail to have knowledge that it has been said, that I cannot consider these questions and express any view on them without coming to decisions on matters which are essentially political and which, therefore, should not be considered by me under a Commission, but rather by a Committee of the House of Commons. To that I make two answers.

Firstly, I must have regard to the terms of the Privy Council Order creating this Commission. Therein is set out my task. It is my duty

to perform that task as accurately, fairly, sensibly and judicially as I am able. I can only hope I shall succeed therein.

Secondly, this very task is not an unusual one for Commissions. Clokie and Robinson, in their very interesting monograph entitled Royal Commissions of Inquiry, 1937, at page 8, state:

" Royal Commissions have continually been appointed for the purpose of making investigations into the administration of the law. The Royal Commission procedure is so flexible and convenient that occasionally, in the face of insistent demand, the Government finds itself forced to provide, in addition to the usual parliamentary controls, a further method of inquiry into its own conduct or into that of its subordinate officials. It may be admitted that this use of Royal Commission procedure is less regularly resorted to than formerly for the purpose of checking the misconduct of officialdom."

It would seem that in the performance of that difficult task, distinguished members of the judiciary, acting as Commissioners, have found it proper to comment on and either commend or criticize the course taken even by Cabinet Ministers. The Right Honourable Sir Lyman Pore Duff, then Chief Justice of Canada, in his Report on the Expeditionary Force to the Crown Colony of Hong Kong, at page 4, said:

" It would perhaps be a possible view that the propriety of this decision by the Government is exclusively matter for consideration and discussion by Parliament. Since, however, I am required to pass upon the question, it is my duty to say that I have no doubt the course taken by the Government was the only course open to them in the circumstances."

There are other instances in recent Canadian history. The Honourable Mr. Justice Davis in his Report of the Royal Commission on the Bren Machine Gun Contract, 1938, said at page 35:

"That a report upon the Inquiry is contemplated by the statute is not open to doubt. But that a finding of misconduct cannot be made against any person, until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel, is expressly enacted by sec. 13 of the statute. No charges of misconduct, however, were formulated against any particular person."

" Having fully weighed the objection advanced on this ground, as well as the weighty consideration brought to my attention by counsel that the rights of the individuals interested in the contract might become the subject of legal controversy elsewhere, I have come to the conclusion that it is inexpedient to comment upon the evidence in respect of its bearing on the conduct of the individuals concerned."

But at page 51, Mr. Justice Davis did comment:

" I think it right to say that there is no evidence (nor is there in the evidence any ground for suspicion) that the Minister or the Deputy Minister or any officer or official of the Department of National Defence was guilty of any act of corruption or anything in the nature of corruption."

In the present case, several counsel have made "charges of misconduct" as to the course adopted by some of the members of the Government in 1960. Chief Justice Dorion in his Report of the Commission of Special Public Inquiry 1964, made in June, 1965, at page 135 said:

" The Honourable the Minister of Justice, before reaching a decision, should have submitted the case to the legal advisers within his Department with instructions to complete the search for facts if necessary and secured their views upon the possible perpetuation of a criminal offence by one or several of the persons involved."

As it will be seen from the terms of reference in the Privy Council Order, I am required to investigate exactly the same matter. Therefore, reassured by the opinions of the aforesaid authors and the examples which I have quoted, I proceed with my task.

2. The Right Honourable John G. Diefenbaker

It was submitted in argument that, upon the presentation of the R.C.M.P. report, the then Prime Minister did not call for a complete review by his Minister of Justice or the latter's staff of the detailed reports upon which the brief, as the R.C.M.P. described it, was based. It was also submitted that the then Prime Minister failed to order a continued and further investigation by the R.C.M.P., under the guidance and direction of the law officers of the Crown, with the view of determining whether any security breach had occurred already or whether a situation which constituted a security risk existed. Such investigation would, of necessity, have involved investigation of the action of The Honourable Mr. Sevigny while the R.C.M.P. investigation to that date had been concerned well nigh exclusively with the actions of Mrs. Munsinger. It must be remembered that the R.C.M.P. officers in evidence before this Commission emphasized that they had no evidence of any breach of security but refrained from stating no such breach had occurred.

It was submitted that such continued investigation, and particularly a searching investigation of the relationship between The Honourable Pierre Sevigny and Mrs. Munsinger during the months of 1960 following January, would have clearly indicated that the relationship had not been discontinued, except for a few casual occasions, as alleged by that Minister, but that he was still in close and frequent touch and that,

therefore, he told "less than the whole truth" to the then Prime Minister. The allegation that Mrs. Munsinger was sick, desperate and distracted, the excuse given by The Honourable Pierre Sevigny—at any rate, to the Commission—for his two meetings with her in November, would have been refuted, by a review of confidential information in the R.C.M.P. files. Such investigation could only have resulted in the demand for his resignation.

It was further submitted that such investigation might well have turned up links between The Honourable Pierre Sevigny or Mrs. Munsinger, or both, with the Montreal underworld—and even supply evidence of pressure already on the Associate Minister of National Defence.

It was argued that The Right Honourable Mr. Diefenbaker did not seem to appreciate the continuing security risk posed by his retention of The Honourable Pierre Sevigny in his then Cabinet post or any Cabinet post. This continuing security risk arose from:

- (a) Danger of pressure from those enemy agents who either might have taken up Mrs. Munsinger's work if she had been an agent or who might have used the events connected with Mrs. Munsinger as a lever to influence the Minister; or
- (b) Underworld figures using these same circumstances to blackmail or pressure The Honourable Pierre Sevigny.

These dangers were both outlined to The Honourable E. D. Fulton by then Commissioner Harvison, and The Honourable Mr. Fulton has testified that he alerted the then Prime Minister to such risks, who, nevertheless, seemed to conclude that it was sufficient to

- (a) Assure himself that no breach of security had occurred—and, in fact, all the R.C.M.P. could say was that they had no evidence whatsoever of it and that no further investigation had been ordered;
- (b) Strictly forbid any further association by The Honourable Pierre Sevigny with Mrs. Munsinger.

This decision, he seemed to believe, was assisted by the prospect that Mrs. Munsinger was leaving Canada at an early date. The Honourable Mr. Fulton evidently regarded this as her decision to leave permanently. The Honourable Mr. Sevigny has testified that he told the then Prime Minister that Mrs. Munsinger was preparing to leave the country in a permanent fashion. Yet, if The Right Honourable Mr. Diefenbaker or The Honourable Mr. Fulton ever had read Exhibit 8 they would have seen that Mrs. Munsinger was pressing for the expediting of her citizenship application so she could go to Germany for Christmas, that on November 28, 1960, the very day following The Honourable Mr. Sevigny's night-long visit to her, Mrs. Munsinger had discussed the matter with Mr. Levesque, the Minister's Executive Assistant, who thought she might obtain a special passport, and that, in the words of the report, it was her intention to "visit Germany before and during the Christmas season". Again, the memorandum on the Citizenship file and the memorandum on the Immigration file convince me, despite The Honourable Mr. Fulton's failure to remember, that in December 1960 he knew Mrs. Munsinger intended to return to Canada—the first of these memos was previous to the conference of December 12-13, 1960 with The Right Honourable Mr. Diefenbaker, and the second was made between December 16 and 19, 1960.

At any rate, even on the basis that he thought Mrs. Munsinger was leaving Canada permanently at an early date, was the forbidding of any continuance of the relationship between The Honourable Mr. Sevigny and Mrs. Munsinger sufficient to eliminate the security risk? Certainly the two risks above referred to remained. It must be concluded that The Right Honourable Mr. Diefenbaker determined they were not, in fact, risks because of his personal assessment of The Honourable Mr. Sevigny as a person who would never permit pressure or blackmail to influence him. Was The Right Honourable Mr. Diefenbaker justified in this assessment of The Honourable Mr. Sevigny? The Honourable Mr. Fulton has declared subsequent events vindicated the then Prime Minister. Even if no security risk occurred thereafter as the result of the decision, surely that is not vindication. Doubt must always be resolved in favour of the "national security". The Cabinet Directives make that plain, even in the case of a Crown servant in a much less sensitive area than any Cabinet Minister, let alone the Associate Minister of National Defence. Certainly the R.C.M.P. reports, which The Honourable Mr. Fulton says he accepted at their face value, raised doubt that such a risk existed and would, for the reasons outlined above, continue to exist after Mrs. Munsinger's departure. The Prime Minister determined he could resolve that doubt in favour of The Honourable Mr. Sevigny's retention in the Cabinet on the basis of his personal assessment of the man.

But, as I have indicated, even a check of the investigation reports which were the basis of the R.C.M.P. brief, would have shown that The Honourable Mr. Sevigny was not telling the whole truth. The Minister had reacted badly under the pressure of the interview itself—had tried to claim he was no worse than a colleague, The Honourable George Hees, although

he now admits he knew only of a very casual association between that Minister and Mrs. Munsinger. Moreover, and most important, was not the then Prime Minister too closely associated with The Honourable Mr. Sevigny to be able to make such a vital decision?

Chief Justice Dorion has emphasized the necessity of obtaining an independent and impersonal assessment of the situation in such circumstances, and so did the United Kingdom Commission which His Lordship quoted. Chief Justice Dorion said at page 131:

" It should not be forgotten that a Minister, as a Judge, all his competence notwithstanding, all his honesty and integrity notwithstanding, is always a human being and his view of a case may be unconsciously distorted by the relations existing between himself and the person or persons concerned."

There is much merit in the argument submitted that The Right Honourable Mr. Diefenbaker should not have made a personal, private decision on this most important question. Cabinet solidarity and joint responsibility are real factors. The other Members of the Cabinet, in their everyday conduct of the nation's business, had to deal constantly with The Honourable Mr. Sevigny. Surely it would have been only fair and proper, and wise as well, to consult them as to whether, in their opinion, that Minister could continue in the Cabinet without risk to the national security. It may perhaps be conjectured that these other Ministers would not have been content to make their decision on the basis of the R.C.M.P. brief and their personal acquaintance with The Honourable Mr. Sevigny, and would have insisted on a careful scrutiny of the reports which were the basis of that brief and on a further investigation as well.

It is significant that The Right Honourable Mr. Diefenbaker's

decision was just to do nothing else but forbid the continued association. There was another alternative open to him and, again, the Cabinet Directives, with which it must be presumed he was familiar, point it out. Consideration could have been given to appointing The Honourable Mr. Sevigny to a much less sensitive post. A more dangerous Cabinet position than that of National Defence, from the point of view of espionage by enemy agents or information seeking by greedy racketeers, could hardly be imagined. Even if the decision could be made to retain The Honourable Mr. Sevigny in the Cabinet, surely enough doubt lingered to justify, indeed demand, that he be moved to a Cabinet post not so vital to the national security as that of Associate Minister of National Defence. It is difficult to understand how anyone could be retained in any Cabinet post when the slightest doubt remained as to his reliability from the point of view of national security, as all Ministers must have access to much classified information, but to retain him as Associate Minister of National Defence under the circumstances would appear to have been most imprudent. I have reserved for Section 6 hereafter a further discussion of the security risk involved in The Honourable Mr. Sevigny's conduct and The Right Honourable Mr. Diefenbaker's task in reference thereto.

Having left The Honourable Mr. Sevigny undisturbed in his portfolio as Associate Minister of National Defence until his resignation February 8, 1963, The Right Honourable Mr. Diefenbaker refrained from even acquainting the senior Minister in that Department, The Honourable Douglas Harkness, of the security risk, for such I believe it was. Even if the remainder of the Cabinet need not be consulted or informed, it was, in my considered opinion, startling that the Member of the Cabinet chiefly

responsible for the Department of National Defence should not have been informed of the situation.

The Right Honourable John G. Diefenbaker failed to inform The Honourable George Hees of the situation revealed in the R.C.M.P. brief. It is true that Exhibit 8 speaks only of Mrs. Munsinger having alleged that she knew this Minister and later, as late as November 25, 1960, having boasted that The Honourable Mr. Hees was then the Minister of Trade and Commerce, and "would start things popping" as to alleged application for a position as a secretary in the Canadian Embassy in Bonn—it would appear in the Trade Commissioner's office. The R.C.M.P. brief had, however, revealed how close her association had become with The Honourable Mr. Sevigny and how she was only too ready to have her friendship with either Minister serve her purpose. It would have been no less than ordinary prudence to have warned The Honourable Mr. Hees in what an invidious position even his past association with Mrs. Munsinger, no matter how casual it might have been, could place him, let alone what serious consequences might flow from a continuation or renewal of that association. I say this despite the fact that on all the evidence before this Commission, the association between The Honourable George Hees and Mrs. Munsinger would appear to have been a casual one, not at all improper in character. Indeed, The Honourable Mr. Hees himself, in his testimony, agreed that the information he later obtained, after this Commission was created, would have precluded him from entering into even such a casual relationship.

There has been referred to this Commission, by the provisions of the Privy Council Order setting it up, inter alia, what was said in the House of Commons on March 7, 1966. At page 2299 of Hansard, The Right

Honourable Mr. Diefenbaker is reported as having said:

" Mr. Diefenbaker: Mr. Chairman, he thought by that—and the threat was made over and over again as to what they were going to do—that they were going to close our mouths. Let me make this statement unequivocally: in no case, and I am naturally bound by my oath as a privy councillor—which apparently did not apply to the Minister of Justice—was there ever any breach of security in this nation in any case referred to or conjured up by him. Secondly, there was no danger to national security and I will go into that tonight, in anything that took place."

This seems to be a most surprising statement in view of the uncontradicted evidence that the whole matter arose out of an investigation by the R.C.M.P. upon the subject of security, and the further fact that The Right Honourable Mr. Diefenbaker's own Minister of Justice admitted in his testimony that the report was concerned with a possible security risk "...a danger to national security", which the said Minister of Justice recognized. It is, of course, to be regretted that The Right Honourable Mr. Diefenbaker did not see fit to appear before this Commission and give me his testimony on this and many other subjects.

3. The Honourable E. Davie Fulton

It was submitted that the then Minister of Justice had not gone behind the R.C.M.P. brief to assure himself of the prima facie soundness of the allegations therein by checking the sources thereof. It must be noted that The Honourable Mr. Fulton, in his evidence, has testified that "I accepted the correctness of the facts as they were reported to me. I made only one enquiry, as I think I told you; were they satisfied as to the accuracy of the allegations that they had made." It would seem to me that the action of the Minister of Justice in accepting the R.C.M.P. brief without verifying the conclusions contained therein was sufficient for the purpose of reporting to his Prime Minister, The Right Honourable Mr. Diefenbaker. This reporting, with such promptness, is commendable.

It may well be that The Honourable Mr. Fulton should have given the most careful consideration to the R.C.M.P. reports which were the basis of their brief, or more properly have delivered them to the experienced law officers of the Crown for such careful consideration in order to accomplish another and a very proper purpose. The Honourable Mr. Fulton testified he inquired on several occasions whether there was any evidence of a breach of security for Canada and was informed that there was not. Now officers of the R.C.M.P. are those charged with investigation in security matters and are the only skilled investigators who could make further investigation and reports on security matters. Any other information to the Government would

have to be submitted to them for confirmation. Their task, however, is that of fact-finders. The evaluation of those facts in law and the testing as to whether all available facts have been properly investigated is the task of a skilled law officer. I am of the opinion that The Honourable Mr. Fulton should not have been content to leave the question of whether there had been a breach of security, for instance any offence against the Official Secrets Act, to be determined only from the bare conclusion stated in the R.C.M.P. brief. It must be remembered that the whole of the R.C.M.P. investigation up to the time the brief was handed to The Honourable Mr. Fulton was as to the past and present conduct of Mrs. Munsinger. It is my certain view that the law officers would not be content with such a partial investigation and would not have agreed that there had been no breach of security—as distinguished from the statement that there was up to then no evidence of such breach—without a complete investigation of the conduct of others than Mrs. Munsinger. The duty of the Prime Minister was to deal with the Members of his Cabinet and to determine, either alone where appropriate or in Cabinet meeting, whether various of the Members of it should so remain. It was the duty of the Minister of Justice to determine by his own, or even better by his officers', careful consideration, whether any security offences had been committed.

An example of a matter which certainly could have been the subject of further careful investigation and consideration was the statement which appears in Exhibit 10, and which the R.C.M.P. officers testified had been communicated verbally to The Honourable Mr. Fulton. This was that Noel, the security officer of the Montreal shop which had caused Mrs. Munsinger's arrest on February 3, 1961, reported that Montreal police had

informed him that political pressure was being brought to bear on them for Mrs. Munsinger's release and that, if charges were pressed, an important political figure would be blackmailed. This was one of the very types of danger to the national security which the R.C.M.P. feared. The report indicated that an offence had been committed, not that one might be committed. There was certainly a duty to investigate further and, at that time, the sources of information were known and easily reached. Yet I am not of the opinion that the R.C.M.P., having reported to its Minister, could have investigated further reports of political pressure and blackmail of an important political person without instructions from the Minister of Justice and these The Honourable Mr. Fulton did not give. In my view, his direction to be kept informed generally, was not sufficient.

The Honourable Mr. Fulton, it was submitted, failed to direct a further investigation, which investigation would, of necessity, have included a scrutiny of the conduct of at least one of his fellow Cabinet Ministers. This failure is alleged, not upon the topic of whether or not a security breach had occurred, with which I have already dealt, but upon the topic of whether a security risk continued to exist. Here, The Honourable Mr. Fulton took the definite position that "Mr. Diefenbaker had the responsibility of making the decision. I had the responsibility of reporting the facts to him."

I am not of the opinion that The Honourable Mr. Fulton can be criticized for taking the stand that, not only was the decision of whether or not to retain The Honourable Mr. Sevigny in the Cabinet that of the then Prime Minister, but that the decision to do so without further investigation was also his. In my view, it would have been improper for

The Honourable Mr. Fulton, without the then Prime Minister's instructions or approval, to have instituted a further investigation as to the continuing security risk. I have already commented on The Right Honourable Mr. Diefenbaker's decision.

Should The Honourable Mr. Fulton have insisted that the whole matter be canvassed in Cabinet, or at least that The Honourable Messrs. Harkness and Hees be informed and, failing in having either of these suggestions accepted, have resigned? It would appear to have been proper assistance to The Right Honourable Mr. Diefenbaker, in what must have been a difficult decision, to have suggested Cabinet consideration or at least that these two other Ministers be informed. The Honourable Mr. Fulton stated, however, the decisions were the then Prime Minister's and whether the decision was a wise one or not, I am ready to conclude that The Honourable Mr. Fulton, albeit with some considerable misgiving, agreed with it. Indeed, he alleged it was vindicated by subsequent events. Therefore he did not consider that he was called upon to resign.

I am ready to conclude that The Honourable Mr. Fulton did personally, and on his own initiative, take some steps even before he conferred with the then Prime Minister. I find the memorandum on the Citizenship file, dated December 7, 1960, and contained in the file now marked as Exhibit 27, most convincing. It reads:

MEMORANDUM • GOVERNMENT OF CANADA

TO : File of Mrs. Gerda Munsinger

YOUR FILE No:

FROM : Registrar of Canadian Citizenship

OUR FILE No: 28658-60

SUBJECT:

DATE: 7/12/60

Dr. Davidson spoke to me about this case today and said that the Minister had informed him that a certificate was not to be granted until the case was first brought to her attention. I informed Dr. Davidson that the R.C.M.P. had reported by a letter on October 21 that their inquiries were still under way and that we would be advised of the results at the earliest possible date.

Care must be taken not to move towards the grant of a certificate of Canadian citizenship in this case until it has been brought to the attention of the Deputy Minister. Bring it to my attention as soon as the report is received from the R.C.M.P.

"J. E. Duggan"

J. E. Duggan,
Registrar.

JED:HP

Neither The Honourable Mr. Fulton nor Dr. Davidson nor Mr. Duggan who gave evidence, nor The Honourable Mrs. Fairclough, who did not herself testify but who replied to counsel's letter by hers dated May 16, 1966, filed as Exhibit 31, was able to remember the instance there recorded, but none could deny that it had occurred. I am of opinion that this is just an honest and reasonable failure of personal recollection after five and one-half years and that the contemporaneous memorandum is the most cogent and convincing evidence that, immediately on receiving the first verbal report from the R.C.M.P. on December 7, 1960, The Honourable Mr. Fulton must have taken steps to stay Mrs. Munsinger's application for Canadian citizenship. Further, the long memorandum signed at Dr. Davidson's instructions by his assistant, Mr. J. S. Cross, dated December 27, 1960, and contained in the Immigration file now marked as Exhibit 28, contains the statement:

"He was hoping we might be willing to take a calculated risk and stamp her passport 'Refused Re-entry to Canada', but after consultation with the Minister and Mr. Fulton, Minister of Justice, (also Baskerville and Chalmers) I said that we could not legally do that. It was finally decided that nothing could be done."

Again, neither The Honourable Mr. Fulton nor Dr. Davidson had any memory of the event reported in that sentence, although Dr. Davidson remembered the details in reference to the conference with the R.C.M.P. officers. Staff Sergeant Shorey of the R.C.M.P., who was then a corporal, attended that conference on December 16, 1960 and, in his testimony, identified his memorandum for file made on that day and now marked as Exhibit 29. That memorandum corroborates the fact that Dr. Davidson had conferred with The Honourable Mrs. Fairclough and indicates that it was their intention to confer with The Honourable Mr. Fulton thereafter. Again, as against

failing memory, I am convinced by these two memoranda that there was an attempt made by the R.C.M.P. to prevent Mrs. Munsinger's re-entry into Canada and that that effort had the co-operation of both The Honourable Mrs. Fairclough and The Honourable Mr. Fulton. Such independent action on The Honourable Mr. Fulton's part was commendable. It is regrettable that he did not take the other independent action which I have suggested above.

The Honourable Mr. Fulton, in his testimony, made several corrections and explanations of his speech in the House of Commons on March 14, 1966. Since the statements made in the House that day were not the subject of any reference to me in the Privy Council Order setting up this Commission, I make no comment.

4. The Honourable George H. Hees

In considering The Honourable Mr. Hees' position, it is my intention to have regard only to the evidence adduced before the Commission. Many wild rumours were current and livid stories appeared, especially in the foreign press. In the case of The Honourable Mr. Hees, I intend to pay no more attention to them than in the case of others with whom this Report is concerned. The evidence before the Commission consisted of two main sources: firstly, the statements in the R.C.M.P. brief and, secondly, the evidence given to the Commission by The Honourable Mr. Hees himself with some references to his situation in the evidence of The Honourable Mr. Fulton, The Honourable Mr. Sevigny and Mr. Gaston Levesque.

In Exhibit 20, the version of the R.C.M.P. reports prepared to eliminate matters of secrecy, it was stated in paragraph 33 "...that she knew several Members of the Federal Cabinet and named Mr. Hees, the former Minister of Transport and then Minister of Trade and Commerce, and Mrs. Fairclough, the Minister of Citizenship and Immigration, and said she knew others." Again, in paragraph 35 of the same Exhibit 20, there appears the reported statement of Mrs. Munsinger to a friend that "...a friend of hers, George Hees, had been transferred from the Ministry of Transport to the Ministry of Trade and Commerce. She claimed that he would probably start things popping and she said that she would call Mr. Hees and see what he was doing." This was said by a woman with whom The Honourable Mr. Hees

testified his acquaintance was so casual that he was more familiar with her nickname "Ricky" than her surname.

In his testimony, The Honourable Mr. Hees denied that he had ever attempted to assist Mrs. Munsinger to obtain a position and that she, or anyone on her behalf, had ever requested that he do so. The Honourable Mr. Hees also denied that he had ever exerted any pressure to have her released from arrest in February 1961. The Honourable Mr. Hees admitted knowing Mrs. Munsinger and testified he had been introduced to her at a banquet given in The Honourable Mr. Sevigny's honour in Montreal, about the end of September 1959. At that banquet over 3,000 people were present. The Honourable Mr. Hees could not identify the person who had so introduced him. He further testified that, on two different occasions thereafter, Mrs. Munsinger had come to Ottawa and telephoned to request that he should take her out to luncheon—a request with which he complied. The Honourable Mr. Hees stated further that on one occasion, being in Montreal, he had requested her to accompany him to dinner and that she had done so. The Honourable Mr. Hees testified that these were the only four occasions on which he had seen Mrs. Munsinger and that nothing improper occurred on any occasion. That his memory might not have been totally accurate is indicated by the evidence of Gaston Levesque who testified that, in October 1960, while attending Mrs. Munsinger at a bar in the Beacon Arms Hotel in Ottawa on The Honourable Mr. Sevigny's instructions, (his evidence would seem to place the date accurately as either October 10 or October 11, 1960) The Honourable Mr. Hees entered, was greeted by Mrs. Munsinger, who went over to speak to him and returned to inform Mr. Levesque that The Honourable Mr. Hees was to be appointed Minister of Trade and Commerce. He was so appointed on October 11, 1960.

There was certainly no breach of security revealed in the evidence above recited. The Minister freely admitted that, judging from Mrs. Munsinger's character as revealed later and reported to this Commission, even that slight association might have been unwise. Accidental contacts and association with hundreds of people are difficult for any Minister to avoid. Indeed, such avoidance is not desirable. I am in accord with the view of The Right Honourable Lord Clement Atlee cited by The Honourable Mr. Hees' counsel that "It would be a great mistake to think that ministers should live cloistered lives". Nevertheless, The Honourable Mr. Hees was a Minister of the Crown holding an important portfolio in the Government of Canada. He and other Ministers must and do realize that many persons seek closer association with them than the positions of such persons justify, perhaps with the intention of improperly currying favours or exerting influence. It must have been apparent to The Honourable Mr. Hees that Mrs. Munsinger desired closer association with him. In his evidence, Mrs. Munsinger was always the person who initiated the meeting. It was her request that she be his guest, which resulted in both luncheon engagements. It was at her suggestion that he invited her to dine with him in Montreal. Would it not have been prudent on The Honourable Mr. Hees' part to have found out, from whomever introduced Mrs. Munsinger on the first occasion, something more about her—perhaps particularly, whether she had sought out the introduction? There was no security breach; as events turned out, there was no security risk. But if the association had continued and intensified there might have been a security risk. The lack of discretion was slight but regrettable.

It is my intention to deal with the comments of The Honourable Mr. Cardin at the press conference hereafter.

5. The Honourable Ellen Fairclough

Although given notice of the Commission and a copy of Exhibit 20 and later copies of the two memoranda in Exhibits 27 and 28, The Honourable Mrs. Fairclough did not appear before the Commission and was not represented by counsel. Such incidental part as she played in the matter I have dealt with above and I have no further comment to make.

6. The Honourable Pierre Sevigny

The Associate Minister of National Defence is the Minister with whose conduct and position this Commission has been chiefly concerned. He appeared before the Commission and gave extensive evidence. He was subjected to careful cross-examination by all concerned. Moreover, his counsel called as a witness Miss Jacqueline Delorme who was a friend of both The Honourable Mr. Sevigny and Mrs. Munsinger.

The Honourable Mr. Sevigny was appointed Associate Minister of National Defence on August 20, 1959. He has testified that in early September 1959 he met Mrs. Munsinger "...at a social reunion in the Sheraton-Mount Royal Hotel in Montreal. I was present with quite a few friends who were more or less in a party mood. They told me they would be having dinner later, and one of them said his escort would be a very beautiful young lady. He eventually introduced me to Mrs. Munsinger." The Honourable Mr. Sevigny was very emphatic in his description of the attractiveness of Mrs. Munsinger's person and her personality. It would appear on his own testimony that their acquaintanceship ripened rapidly, and I can best summarize the result of long examination and cross-examination by quoting The Honourable Mr. Sevigny's testimony as to his conference with The Right Honourable Mr. Diefenbaker and The Honourable Mr. Fulton on December 13, 1960: "But, My Lord, I never denied during that interview that I had had a relationship, a physical relationship, with Mrs. Munsinger."

In viewing that statement and the evidence which preceded it, there can be no other conclusion than that The Honourable Mr. Sevigny and Mrs. Munsinger had for some time indulged in intimate sexual relations, and The Honourable Mr. Sevigny's counsel so admitted.

It was The Honourable Mr. Sevigny's testimony that such close association ceased in January 1960, after Miss Delorme had informed him that Mrs. Munsinger had an unfortunate tendency to speak much too openly of her association with well-known persons. The Honourable Mr. Fulton testified that The Honourable Mr. Sevigny on December 13, 1960, said to The Right Honourable Mr. Diefenbaker: "...that as a matter of fact he had known this girl, this woman, before, but he had stopped seeing her several months previously." The Honourable Mr. Sevigny testified that "I mentioned to both Mr. Fulton, I believe, and the Prime Minister that my—that I had stopped seeing or meeting Mrs. Munsinger a very long time ago; that the only reasons why I had seen her in November was because a friend of hers had expressed the wish that I see her in order to help her to go back to Germany, which was her expressed wish." He also testified "This is why our relationship between January 1960 until the last time I saw her—which was in November 1960—was limited to a few chance or occasional meetings and some telephone conversations." And in cross-examination, "...and almost not at all from 1960 until November 1960."

The Honourable Mr. Sevigny maintained that position throughout cross-examination and even volunteered that he had instructed his office staff not to permit Mrs. Munsinger to speak to him on the telephone. He assigned no definite time to the issuance of such instructions but it must have been, on his testimony, before November 1960, for he gave this as the

reason she could not speak to him on the telephone about the extension of her German passport immediately prior to their meeting of November 26-27, 1960.

Even on the basis of The Honourable Mr. Sevigny's testimony, however, the meetings during such period were not so infrequent as he pictured. He admitted in cross-examination to a meeting "around February 1960" when Mrs. Munsinger was engaged in a fashion show in Ottawa, and again in October 1960 when Mrs. Munsinger had come to Ottawa with friends. On this occasion they met and he presented her with a ring, which he described as a mere souvenir of his recent trip to Mexico and as of little monetary value. The Honourable Mr. Sevigny further admitted meeting Mrs. Munsinger on November 13, 1960 in Montreal. In cross-examination he stated "To be very precise, I had seen Mrs. Munsinger, as you know, on the 13th of November when I went to her apartment." But in examination in chief, referring to the same meeting, he swore "We met in Jackie Delorme's place", and Miss Delorme had also testified as to the same meeting "So Mr. Sevigny came to my place and said that he would help her to go to Germany." The Honourable Mr. Sevigny has also admitted that he saw Mrs. Munsinger at her apartment on the night of November 26, 1960 and that he left at 7:35 A.M. the next morning, as he testified, after falling asleep following a long day's work and a long conversation in regard to Mrs. Munsinger's problems. He swore the first of these two latter meetings was the result of Miss Delorme's request that he assist Mrs. Munsinger in arranging her documentation so she could return to Germany and that this, plus Mrs. Munsinger's worry that she had been twice interviewed by the R.C.M.P., were the reasons for the second. In cross-examination, however, when counsel for this

Commission taxed him with the assertion that the real reason for the second night-long meeting was Mrs. Munsinger's suggestion that they continue "what you call intimate relationship", The Honourable Mr. Sevigny answered evasively to the effect that he did not remember everything of the conversation but that this woman, who he alleged was sick, penniless and very worried, was quite gay while speaking to him on the telephone earlier in the evening, when his later visit was arranged, and that "...we had a very short conversation which was relatively amusing." I find it significant that in such a short amusing conversation neither of the two alleged reasons for The Honourable Mr. Sevigny's visit to Mrs. Munsinger later in the evening appears to have even been mentioned.

Mr. Levesque's evidence is even more revealing. He testified that he became Executive Assistant to The Honourable Mr. Sevigny on September 21, 1959 and remained such until the Minister's resignation. He remembers four occasions when, as such, he met Mrs. Munsinger, and that as well he had spoken to her on the telephone. On cross-examination he detailed these four occasions as, once in the Minister's office in the spring of 1960 before the beginning of May, once at the Riverside Steak House in Ottawa in the summer of 1960, once at the bar in the Beacon Arms Hotel on October 10 or October 11, 1960, and once in her apartment in Montreal at a date which he could not fix. On the first occasion Mrs. Munsinger came to the office to see The Honourable Mr. Sevigny but he was at a meeting of the Privy Council and she left without seeing him. On the third occasion, Mr. Levesque had been despatched by The Honourable Mr. Sevigny to see Mrs. Munsinger. On the second and fourth occasions, The Honourable Mr. Sevigny was present, and on the fourth Mr. Levesque departed leaving The Honourable

Mr. Sevigny in the apartment. In addition, Mr. Levesque identified his letter appearing in the Citizenship file Exhibit 27 and dated September 9, 1960, as having been written on The Honourable Mr. Sevigny's instructions and swore that a telephone inquiry by him as indicated by a notation in the same file dated November 24, 1960, would also have been made on The Honourable Mr. Sevigny's instructions.

All of this evidence leads one to the conclusion that The Honourable Mr. Sevigny's association with Mrs. Munsinger during the whole of 1960 was much closer and more frequent than he desired The Right Honourable Mr. Diefenbaker to realize and much closer than he desired this Commission to ascertain. The inevitable corollary of this is that The Honourable Mr. Sevigny told his Prime Minister much less than the whole truth, and surely that fact alone should have driven him to tender his resignation. As I have pointed out, a more thorough investigation in 1960 on The Right Honourable Mr. Diefenbaker's instructions would have revealed a situation which would have entitled him to call for his Minister's resignation on this ground of concealment alone.

Such further investigation would have revealed as well that the liaison would have appeared to be within the knowledge of many other persons and of these at least some were said to be of unsavory reputation. The danger of blackmail and improper pressure would have been revealed as startling. It would seem that The Honourable Mr. Sevigny's position, and indeed that of The Honourable Mr. Fulton, was that his character was so sturdy that he could, and would, resist any attempt at blackmail or improper pressure. Yet, as counsel for the Commission pointed out, The Honourable Mr. Sevigny when tested in the one instance of pressure—the confrontation by The Right

Honourable Mr. Diefenbaker and The Honourable Mr. Fulton on December 13, 1960—displayed no such sterling qualities. I have pointed out what I believe was a serious concealment from, and misleading of, his Prime Minister. Again, his attempt to use The Honourable Mr. Hees as a shield, which attempt The Honourable Mr. Fulton described in the words:

"Yes. I think he said to the effect that he did not understand why such a serious view was taken at his relationship with Mrs. Munsinger; that she knew a number of other people, and that, after all, Mr. Hees knew her too.

was a far from bold acceptance of the situation when, on The Honourable Mr. Sevigny's testimony, all he knew of any association between The Honourable Mr. Hees and Mrs. Munsinger was her statement that she knew Mr. Hees. I have come to the conclusion that the then Prime Minister, had he been properly apprised of all the facts, by verification of the R.C.M.P. brief and had he then witnessed The Honourable Mr. Sevigny's lack of frankness, could not possibly have come to the conclusion that his retention in the Cabinet constituted no security risk.

On all the evidence, and despite The Honourable Mr. Sevigny's somewhat vague denials, there would seem no doubt that he was actively using his influence to obtain Canadian citizenship for Mrs. Munsinger. Mr. Levesque has testified that his actions on September 9, 1960, and November 24, 1960, to which I have referred above, could only have been upon his Minister's instructions. I cannot fail to infer that, for an Executive Assistant to write such a letter as that of September 9, 1960, in Exhibit 27, on the departmental letterhead and to follow up with a telephone call more than two months later, is to consciously exert influence in favour of the person who was the subject matter thereof. It

is true, of course, that neither the letter nor, so far as can be ascertained, the telephone conversation exhibited any pressure; the identified source of each was sufficient. In my view, it was the height of indiscretion to authorize such action without a very careful investigation of the person whose application a Minister of the Crown is attempting to further.

The Honourable Mr. Sevigny, in his testimony, outlined how perturbed he was when he found out that Mrs. Munsinger had used his name as one of the references in her application for citizenship and that he lectured her on this indiscretion when he learned of it on November 13, 1960. The application for citizenship executed by Mrs. Munsinger contains no mention of The Honourable Mr. Sevigny's name. Indeed, the departmental form for such application makes no provision for the recital of the names of any recommenders. The evidence is more surprising since, as I have pointed out, the Citizenship file, Exhibit 27, reveals that The Honourable Mr. Sevigny had himself acted to further the application in the fashion I have outlined. I find myself in agreement with the submission of counsel for The Honourable Mr. Cardin that, if Mrs. Munsinger had used The Honourable Mr. Sevigny's name as a reference in her application, it would have been before the Citizenship Court in Montreal on September 28, 1960, and he would have been called or he would not, and that would have been the end of it.

In my view, a subject of far more concern to The Honourable Mr. Sevigny was the news that the R.C.M.P. had interviewed Mrs. Munsinger, not once as is usual upon a citizenship application being made, but twice, and that they had asked her all sorts of questions. He testified that Mrs. Munsinger had warned him "...and they seemed to be particularly interested

in asking the questions about you." It is my conclusion that The Honourable Mr. Sevigny feared that Mrs. Munsinger would reveal the extent of her liaison with him, a fear which was well-founded as paragraph 26 of Exhibit 20 shows.

In conclusion, as to The Honourable Mr. Sevigny, I adopt and recommend Lord Denning's statement found at page 102 of his renowned report on The Profumo Affair:

"But it is not every piece of immorality or discreditable conduct which can be said to be a 'security risk'. In my opinion immorality or discreditable conduct is only a security risk if it is committed in such circumstances that it might expose the person concerned to blackmail or to undue pressures which might lead him to give away secret information."

I am of the opinion that The Honourable Mr. Sevigny's liaison with Mrs. Munsinger was of such a type as might expose him to blackmail or undue pressure and that nothing, even his outstanding war record or fine family background, could assure that he would not be subject to, and might yield to, such pressures. Unless after careful consideration it could be decided that such assurance existed, then prudent conduct in the administration of government, as stressed in the Cabinet Directives, demanded that the doubt be resolved in favour of Canada and that his resignation be requested. I have come to this conclusion even though I find that there was no evidence whatsoever that The Honourable Mr. Sevigny, at any time before he was informed of the R.C.M.P. reports, either knew or had any means of knowing of Mrs. Munsinger's espionage activities before she came to Canada. The Honourable Mr. Sevigny has testified that he "never had cause to suspect" such involvement. Moreover, he testified that "Whilst I knew her, Mr. Dupré, she certainly was never...a prostitute nor a call girl, and

certainly not a thief." There is no other evidence to suggest that The Honourable Mr. Sevigny had any knowledge of those latter activities, although even casual inquiry should have provided him with some information thereon. The mere fact that the liaison had occurred, even granting that it had done so without The Honourable Mr. Sevigny knowing the previous history or character of his associate, was sufficient, in my opinion, to leave doubt as to his reliability, and therefore to create a "security risk" requiring his retirement from the Cabinet. Indeed, the fact that The Honourable Mr. Sevigny had allowed this situation to develop without careful consideration of the suitability of the person with whom he was associating is, itself, a strong indication of his own unsuitability to hold any portfolio in the Cabinet, let alone the most sensitive one of Associate Minister of National Defence.

7. The Honourable Donald Fleming

The Honourable Mr. Fleming was appointed Minister of Justice on August 9, 1962; the House was dissolved on February 6, 1963, and The Honourable Mr. Fleming resigned as Minister of Justice after the defeat of the Government in the general election on April 22, 1963. The only contact The Honourable Mr. Fleming had with the Munsinger case was on or about January 30, 1963, when Commissioner Harvison and Assistant Commissioner McClellan (as they then were) delivered to him a copy of the brief, Exhibit 10, which was a précis of Exhibit 8, the long R.C.M.P. report, and also the outline of events occurring after December 8, 1960. The latter had been reported verbally to The Honourable Mr. Fulton. It is unimportant whether the delivery of such report to The Honourable Mr. Fleming was at his request or whether the R.C.M.P. officers delivered it of their own volition, being concerned with what they regarded as a continuing security risk. I am quite content to accept The Honourable Mr. Fleming's memory that it was for the latter reason. At any rate, The Honourable Mr. Fleming immediately conferred with The Right Honourable Mr. Diefenbaker, even broaching the matter to the latter as they sat in the House. The latter replied "I know all about it. Fulton told me about it at the time." The Right Honourable Mr. Diefenbaker assured The Honourable Mr. Fleming that he had dealt with the matter, and therefore the latter took no further action and did not refer to the matter again. This was a little more than two years after The Right Honourable Mr. Diefenbaker had made his decision

and dealt with the Munsinger matter in the fashion I have already outlined. The Honourable Mr. Fleming, I am of the opinion, could not have been asked to take any further or different action in January 1963. I can see no criticism of his course.

8. Mr. Gaston Levesque

On April 7, 1966, a copy of Exhibit 20 was forwarded to Mr. Levesque and he was informed that, if he wished to give evidence or make representations in reference thereto, he should make the appropriate arrangements with counsel for the Commission. On May 18, Mr. L. P. de Grandpré, Q.C., produced his client and he gave evidence and was cross-examined thereon. I have already referred to Mr. Levesque's testimony and it requires no additional comment. I have found his evidence of great assistance in determining the factual situation up to and on December 13, 1960, when The Right Honourable Mr. Diefenbaker and The Honourable Mr. Fulton conferred with The Honourable Mr. Sevigny.

9. The Right Honourable Lester B. Pearson

Neither the present Prime Minister, nor The Honourable Mr. Favreau, nor The Honourable Mr. Cardin were mentioned in Exhibit 20 which, of course, dealt only with events up to February 1961. Neither the Prime Minister nor The Honourable Mr. Favreau were therefore notified of the hearings of this Commission but, as The Honourable Mr. Cardin's press conference of March 10, 1966 and his letter to the Prime Minister of March 11, 1966, were specifically referred to this Commission, such notification was sent to the Minister of Justice. Both the Prime Minister and The Honourable Mr. Favreau have since been mentioned in the testimony given before this Commission and it therefore becomes relevant and proper that I consider whether the Munsinger case was handled by these two Honourable Ministers in accordance with the rules and principles applicable to persons having access to classified information.

Commissioner George B. McClellan, on cross-examination by counsel for The Right Honourable Mr. Diefenbaker and The Honourable Mr. Fulton, testified that at a conference in the office of the Prime Minister, during the last two or three days of November 1964, at which were present The Honourable Mr. Favreau and Mr. Gordon Robertson, Secretary to the Cabinet, the Prime Minister asked him "...if [he] had any information on [any] files of a nature which would indicate impropriety or wrongdoing on the part of any member of the government...the present Government." Commissioner

McClellan continued "I was then asked after I had answered this question if I had any information indicating any impropriety or anything of a scandalous nature involving any Member of Parliament in any party over, I think, the last ten years, I think, was the expression used." Commissioner McClellan testified that he replied in the affirmative, referred to the Munsinger file, and that the Prime Minister, after consideration, expressed the view "Well, I had better see it."

As a result, and on the Prime Minister's direction, the Commissioner caused Assistant Commissioner Kelly to deliver the brief, Exhibit 9, to The Honourable Mr. Favreau on December 1, 1964. Assistant Commissioner Kelly took it back the same day and then Commissioner McClellan himself delivered the same Exhibit to the Prime Minister on December 2, 1964.

This conference arose during the middle of the period when the Denis case and the Dupuis case were being debated in the House of Commons. It is self-evident that the Prime Minister was concerned with matters which the R.C.M.P. might be investigating in connection with the conduct of any Minister of the Crown or any Member of Parliament in the discharge of his duties of office or exercise of his privileges. It was such improprieties or matters of scandalous nature, such as allegations of influence peddling or improper use of influence of position, which had been debated in the House. The concern of the Prime Minister as to whether there existed any evidence of like matters was not only a natural but a proper one. In the light of the revelations in the House which had just been made and were the subject of debate, it would have been imprudent and clearly bad administration for the Prime Minister to have failed to make this inquiry from the Commissioner of the R.C.M.P. Neither the Prime Minister nor the

R.C.M.P. Commissioner, I am convinced, could have understood the inquiry as being any attempt to pry into the private lives of Members not connected with their duties or position. The most convincing proof of this is that: firstly, the plain fact that the R.C.M.P. would have no information on such matters unless they involved security or misuse of office—the Force is not under any duty to be concerned with such matters and there was no scintilla of even a hint that it was directed to be concerned with such matters either before or after November 1964; secondly, the reply of the Commissioner of the R.C.M.P. citing the Munsinger case demonstrated that he realized immediately what information the Prime Minister sought, for that brief which he delivered to the Prime Minister dealt with possible security risks and misuse of position.

What was the Prime Minister's action upon the matter? It would appear to have been simply to file the brief in the Privy Council Office until the Commissioner of the R.C.M.P., on April 1, 1966, requested its return for presentation to this Commission. In November and December 1964 the two persons who might involve this country in any security risk had been removed from contact with any classified information. Mrs. Munsinger had left Canada on February 5, 1961, and had never returned. The R.C.M.P. had taken steps to be sure that it was notified if she ever did. The Honourable Mr. Sevigny had resigned from the Cabinet in February 1963 and was no longer even a Member of Parliament. To have contemplated any further investigation by the R.C.M.P. four full years after they had reported in December 1960 would have been purposeless. Therefore, one cannot understand what other action the Prime Minister could have been expected to authorize than to merely file the brief in the Privy Council Office. The

Honourable Mr. Fulton indicated in his testimony that information as to any prior cases of alleged indiscretion by Ministers involving security matters would be retained in the Privy Council Office. I am of the opinion, therefore, that the brief was properly deposited in that office by the Prime Minister and should be returned to that office upon the completion of my duties.

10. The Honourable Guy Favreau

As will be seen from the above, The Honourable Mr. Favreau was furnished with a copy of the R.C.M.P. brief, Exhibit 10, on December 1, 1964; he read it and returned it at once to Assistant Commissioner Kelly. My conclusion that no further action was required by the present Prime Minister applies equally to The Honourable Mr. Favreau.

11. The Honourable Lucien Cardin

The Privy Council Order refers to this Commission the following items relevant to considering the position of The Honourable Mr. Cardin. They are:

(1) His statement in a letter to the Prime Minister, dated March 11, 1966. That letter was produced at the hearing and marked as Exhibit 2. It reads as follows:

(CREST)

MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA

MINISTRE DE LA JUSTICE ET
PROCUREUR GENERAL DU CANADA

OTTAWA, 11 March, 1966

My dear Prime Minister:

On Friday, March 4th, as recorded on Page 2211 of Hansard I stated that the Leader of the Opposition "was accusing us of hiding the truth, of hiding evidence from the committee."

I added that he was "the very last person in the House who can afford to give advice on the handling of security cases in Canada," and I also said "I want the Right Honourable gentleman to tell the House about his participation in the Monseignor case when he was Prime Minister of this country."

To this the Right Honourable Gentleman replied "I am not worried. Have your commission look into it. Put it on the agenda."

I have subsequently indicated that the Leader of the Opposition had failed to place the file on this case before the law officers of the Department of Justice for their advice, that the information given to the Leader of the Opposition when he was Prime Minister concerned

a case in which security risks were involved.

I have alleged that the Leader of the Opposition mishandled this case and that he failed to seek the advice of the law officers of the Department of Justice as to the appropriate method of dealing with the case, and I am willing and anxious to have these allegations considered by a judicial enquiry which will be free to examine all aspects of the case. I will abide by the result of such enquiry, fully conscious of the consequences.

I have made and make no other charges.

Yours sincerely,

"Lucien Cardin"

Right Honourable Lester B. Pearson,
Prime Minister of Canada,
House of Commons,
OTTAWA, Ontario.

(2) All statements concerning the case in the House of Commons on March 4 and March 7, 1966. On March 4 there was an exchange between The Honourable Mr. Cardin and The Right Honourable Mr. Diefenbaker reported at p. 2211 of Hansard and which reads:

" But a while ago the right hon. gentleman was accusing us of hiding the truth, of hiding evidence from the committee. Well, I can tell the right hon. gentleman that of all the members of the House of Commons he—I repeat, he—is the very last person in the house who can afford to give advice on the handling of security cases in Canada.

Some hon. Members: Hear, hear.

Mr. Cardin: And I am not kidding.

Some hon. Members: Hear, hear.

Mr. Diefenbaker: And again applause from the Prime Minister. I want that on the record.

Mr. Cardin: I understand the right hon. gentleman said he wants that on the record. Would he want me to go on and give more?

Some hon. Members: Go on. He wants it.

Mr. Cardin: Very well.

Some hon. Members: Hear, hear.

Mr. Cardin: I want the right hon. gentleman to tell the house about his participation in the Monseignor case when he was prime minister of this country.

Some hon. Members: Hear, hear.

Mr. Diefenbaker: I am not worried. Have your commission look into it. Put it on the agenda.

Some hon. Members: Oh, oh."

On March 7, 1966, The Right Honourable Mr. Diefenbaker spoke quite extensively as appears at pp. 2299 and following of Hansard. Insofar as such statements are comments as to his idea of what the Munsinger case entailed, I have dealt with them above. Insofar as his remarks deal with techniques of investigation, they will be more appropriate for consideration by the future Royal Commission on Security Measures generally. For present purposes, the statements may be summarized as an allegation that the Minister of Justice, The Honourable Mr. Cardin, "...looked over at me and said in effect 'We will fix you.'" Since neither The Right Honourable Mr. Diefenbaker nor The Honourable Mr. Cardin gave evidence before this Commission, I make no attempt to conjecture whether the former's view as to what lay behind the latter's glance at him was justified.

(3) All statements of the Minister of Justice at a press conference on March 10, 1966, including those

(a) about involvement with Gerda Munsinger;

(b) about failure to seek the advice of law officers of the Department of Justice;

(c) that there were circumstances that may have constituted a risk to the security of Canada.

I have dealt with the matters referred to in the lettered sub-headings (b) and (c) already in this Report and need not repeat my comments. In my opinion, The Honourable Mr. Cardin's statements were justified on both of these topics.

As to subheading (a), the press conference, a typed manuscript of which has been filed as Exhibit 6, included the statements that Ministers of the former Government (the plural was emphasized) were involved in the case, but The Honourable Mr. Cardin refused to say whether they were involved romantically or otherwise. Two of such former Ministers, The Honourable Mr. Hees and The Honourable Mr. Sevigny, have testified before this Commission. Both have admitted that they knew Mrs. Munsinger and associated with her to some degree. The Honourable Mr. Hees has testified that there never was any incident of indecency or impropriety that if known would hold him up to public contempt or make him vulnerable to blackmail attempts, while The Honourable Mr. Sevigny has admitted that during the interview with The Right Honourable Mr. Diefenbaker on December 13, 1960, "I never denied during that interview that I had had a relationship, a physical relationship, with Mrs. Munsinger." It may therefore be taken that one former Minister, The Honourable Mr. Sevigny, had been "involved with Mrs. Munsinger". It is the submission of counsel for The Honourable Mr. Hees that the word "involved" in the Privy Council Order must mean "to be entangled

with a person in trouble or difficulties" and, despite suggestions of a broader meaning by counsel for the Commission, I am ready to assign that meaning to the word. There has been no evidence before the Commission that there was any romantic association between The Honourable Mr. Hees and Mrs. Munsinger unless two tête-à-tête luncheons and one such dinner could have that connotation in this modern age, but it must be remembered that The Honourable Mr. Cardin specifically refused to characterize the "involvement" as romantic. As I have pointed out above, the association between The Honourable Mr. Hees and Mrs. Munsinger in the circumstances in which it occurred, on his own testimony did entail a lack of discretion and, therefore, may be said to "entangle a person in trouble or difficulties". I am therefore of the opinion that The Honourable Mr. Cardin's statement as to involvement of former Cabinet Ministers in the Munsinger case has been confirmed.

Many other topics were touched on during the long press conference on March 10, 1966. Apart from those already mentioned, the following are of relevance to this Commission. I have lettered them alphabetically after the above three and I shall deal with each in turn.

(d) That certain aspects of the Munsinger case "were worse than the Profumo case".

Such a comment might seem startling but in the latter case the young lady chiefly concerned, Miss Christine Keeler, was at the time a girl with no previous contact whatever with any matter concerning espionage or national security. Lord Denning was satisfied that she had not attempted to obtain from The Honourable Mr. Profumo any information whatsoever. Mrs.

Munsinger, on the other hand, according to the R.C.M.P. reports which would appear to be the sole source of information available to The Right Honourable Mr. Diefenbaker, was said to have acted on several occasions in Germany upon espionage matters, and might well have been continuing to do so in Canada. Those reports showed that she could have available to her an efficient method of passing on any classified information obtained. Moreover, in the Profumo case the Minister tendered his resignation and apologized to the House. The Honourable Mr. Sevigny neither resigned nor was his resignation requested. In these aspects, therefore, the Munsinger case might well be "worse than the Profumo case".

(e) That Mrs. Munsinger had died in East Germany as a result of leukemia.

This statement seems to have been repeated in the press conference many times, at least on six occasions. There is no doubt that such a statement was an error; Mrs. Munsinger was still alive and has since, among other activities, given a long interview telecast over the Canadian Broadcasting Corporation. She was, moreover, found in Munich, not in East Germany. It would appear, although The Honourable Mr. Cardin did not at the press conference state so in terms, that he thought the erroneous information came from the R.C.M.P. Commissioner McClellan testified, however, that "At no time did the Force receive any such information and at no time did the RCMP report any such information to anyone." Miss Jacqueline Delorme, a witness called by counsel for The Honourable Mr. Sevigny, testified that her conclusion was that Mrs. Munsinger had died and that such conclusion was based on Mrs. Munsinger first having informed her, in correspondence, of an illness said to be leukemia and then had failed to

answer Miss Delorme's several subsequent letters to her. Miss Delorme also testified that she told The Honourable Mr. Sevigny that she was sure Mrs. Munsinger had died and that "I told all the people that knew her that she was dead." She further testified that amongst these people was one Hubert Ducharme, a lawyer in Montreal, whom she met at the airport. It appeared from Miss Delorme's evidence that Mr. Ducharme usually referred to Mrs. Munsinger by the name "Monseignor" and counsel for The Honourable Mr. Sevigny links these facts to allege that The Honourable Mr. Cardin must have received the erroneous information as to Mrs. Munsinger's death from Mr. Ducharme. There is no scintilla of evidence to support the allegation. The false rumour of Mrs. Munsinger's death was current through Montreal, spread, on her own testimony, by Miss Delorme. As I have pointed out, she had even informed The Honourable Mr. Sevigny. My only conclusion is that The Honourable Mr. Cardin had simply heard of the false rumour and even believed that the R.C.M.P. must have subsequently investigated and so reported. Commissioner McClellan testified that he supplied no brief on the Munsinger matter to The Honourable Mr. Cardin, and that neither he nor anyone on the Force, to his knowledge, had discussed the matter with The Honourable Mr. Cardin.

(f) That he, The Honourable Mr. Cardin, had seen no R.C.M.P. file and that it was now too late to examine it to do anything worthwhile in the field of carrying out security.

As I have pointed out above, The Honourable Mr. Cardin's statement that he had been shown no file is exactly confirmed by the evidence of Commissioner McClellan. That "It was now too late to do anything worthwhile in the field of carrying out security" would appear also to have been

the decision of The Honourable Mr. Fleming three years before.

(g) That no Cabinet Minister was aware that he was going to mention the name "Monseignor" in the debate and such a course was "provoked out" and not calculated.

This was not the subject of any evidence before this Commission.

(h) That The Honourable Mr. Cardin had no knowledge that former Members of the Cabinet of The Right Honourable Mr. Diefenbaker had been threatened ten days before his first utterance in the House that The Right Honourable Mr. Diefenbaker was going to be exposed if he continued to press.

Again, this was not the subject of any evidence before the Commission.

(i) That The Honourable Mr. Cardin had no knowledge of photographs taken by the R.C.M.P. during the course of this investigation.

Again, there was no evidence before this Commission, and a thorough perusal of the R.C.M.P. files had not shown the slightest indication that such photographs were taken by or for that Force.

(j) That he, The Honourable Mr. Cardin, laid no blame on The Honourable Mr. Fulton, the Minister of Justice in 1960.

It would seem the Minister of Justice, throughout the press conference, took the view that it was for The Right Honourable Mr. Diefenbaker to explain and justify his personal handling of the Munsinger case, and he seems to have realized that The Honourable Mr. Fulton very promptly reported to the then Prime Minister and accepted the latter's decision. Mr. Campbell,

Q.C., counsel for the Minister of Justice, in argument found himself far from as certain of The Honourable Mr. Fulton's lack of blame and I have already considered and expressed my view of such submission by said counsel.

I believe I have now considered all relevant matters which were mentioned in The Honourable Mr. Cardin's press release of March 10, 1966.

12. The Department of Citizenship and Immigration

I have referred to The Honourable Ellen Fairclough, the Minister in 1960, and shall not deal further with any part which she took.

The Immigration authorities permitted Mrs. Munsinger's entry into Canada on an Assisted Passage Loan in August 1955. The Immigration file, Exhibit 28, contains an application for such assistance in the name Gerda Munsinger "divorced" and shows no other name. No provision for a maiden name is made on the form. The requisition for transportation, known as a "warrant", again is in the name of Gerda Munsinger alone and at no place in the Immigration file is the maiden name Heseler shown, although in one reply from the Chief of Canadian Embassy Visa Service, Cologne, Germany, dated July 14, 1959, it is reported that her mother lives in "Weisswasser, Oberlausitz, the Russian Zone of Germany". Her former landlady, Mrs. Maria Hager at Mondsee/Oberoesterreich, Markplatz, neither knew Mrs. Munsinger's address in Canada nor that of her relatives and friends in West Germany. This statement was in reply to the Department's attempts to trace Mrs. Munsinger in order to obtain payment of the balance of her Assisted Passage Loan. On the other hand, in the same Exhibit 28 appears a photostat of a form known as "Canadian Immigration Card" stamped at Quebec on August 7, 1955, Mrs. Munsinger's date of arrival on the S.S. "Arosa Sun", and purporting to be signed by her. This form shows that she carried a German Passport No. 3955952 issued at Bad Nauheim on November 17, 1952. It also shows as name and address of nearest relative "Mother: M. Hager, Mondsee,

Austria", not "landlady" as described in the above report. The Visa Control Officer in Koeln, Germany, reported to the R.C.M.P. that "It would appear Heseler and Munsinger are identical and, through an inexplicable error on our part (RCMP) and on the part of Immigration, she succeeded in obtaining a visa in 1955 after having been rejected in 1952." The records in Germany, other than a "warning card", had been destroyed and it was the R.C.M.P.'s conjecture, as indicated in paragraph 24 of Exhibit 20, that Mrs. Munsinger succeeded in obtaining a visa to enter Canada in 1955 by revealing the name Munsinger and suppressing the name Heseler. Counsel for The Honourable Mr. Sevigny submitted that this could not be true, for the German passport would have had to indicate the maiden name Heseler. Of this there is no evidence whatsoever and the Canadian Immigration card to which I have referred might well lead one to believe Mrs. Munsinger's maiden name was Hager so that the Heseler "warning card" would not enlighten the Visa Section.

In 1960, at the time of Mrs. Munsinger's departure from Canada for a visit, the R.C.M.P. attempted to persuade the Department of Citizenship and Immigration to bar her re-entry. The long memorandum dated December 27, 1960, in Exhibit 28 recounts recommendation of such a course by the R.C.M.P. to the Deputy Minister. It is not my intention to consider the correctness of the Deputy Minister's decision that the Department could not bar Mrs. Munsinger's re-entry because it was not free to utilize information which the R.C.M.P. had obtained from counter intelligence sources outside Canada. That decision was arrived at after careful consideration of the statutory provisions then in force and, it would appear from the said memorandum, after taking the advice of an officer of the

Department of Justice. As it turned out, Mrs. Munsinger returned to Canada on January 10, 1961 but left, not to return, on February 5, 1961, so no harm was done.

It should be noted that the Citizenship Branch of the Department of Citizenship and Immigration did take some action to prevent Mrs. Munsinger from becoming a Canadian citizen. I have already pointed out the memorandum of Mr. J. E. Duggan, the then Registrar of Citizenship, dated December 7, 1960. There is also another memorandum from Mr. Duggan to Dr. Davidson, the Deputy Minister, dated October 24, 1961, some ten months later, in which Mr. Duggan repeats that Dr. Davidson had spoken to him on December 7, 1960, and had stated that the Minister had informed Dr. Davidson that a certificate of citizenship was not to be granted until the case was first brought to her attention. Therefore, despite the fact that Mr. Levesque intervened on Mrs. Munsinger's behalf on September 9, 1960 and November 24, 1960, that a solicitor in Montreal had urged action on or about October 5, 1960, and that Mrs. Munsinger herself, by her letter of November 26, 1960, had requested the matter be expedited, the Registrar of Citizenship made no move to do so—guided, I am ready to find, by the Minister's instructions of December 7, 1960, conveyed to him by the Deputy Minister, Dr. Davidson.

Therefore, there would appear to be no valid criticism of the Department of Citizenship and Immigration. Any error in the issuance of a visa in 1955 would appear to be the result of Mrs. Munsinger's planned avoidance of any revelation of her maiden name. The refusal to bar her re-entry in 1960 was a step taken on advice and after careful consideration. Finally, the desirable result of refusal to grant Canadian citizenship was attained despite considerable urging that such be granted.

13. The Royal Canadian Mounted Police

This Force is charged with the investigation of security matters on behalf of the Government of Canada. The Force first came into contact with any Munsinger matter in 1952 when it was asked to report upon the security aspect of an application for an immigrant's visa by one Gerda Heseler. This request was made, in the ordinary course, to the officer of the Force who acted as Visa Control Officer in a city in West Germany. As a result of his investigation, the background of petty thievery, prostitution, other criminal offences and espionage, as revealed in Exhibit 8, the R.C.M.P. brief which I find was communicated to The Honourable Mr. Fulton in December 1960 and which is summarized in paragraphs 3 to 19 of Exhibit 20, with references as to sources of information deleted, was exposed. On the basis of this investigation, the said Gerda Heseler was refused a visa in a rejection report made on July 15, 1952.

The R.C.M.P. next heard of Mrs. Munsinger in 1960. Having succeeded in obtaining a visa and entering Canada as an immigrant in 1955 in the fashion I have already outlined, she had made an application for Canadian citizenship on June 28, 1960, and that application, again as is the ordinary course, was referred to the Force for a security check. The application showed the applicant's maiden name as "Heseler". Routine investigation revealed she was the same person who was the subject of a rejection report in 1952 and reference to the reports which caused such

rejection rightly convinced the R.C.M.P. that there might be in Canada a person who was a very real security risk and who might cause a security breach at any time. The investigation continued and revealed the startling story set out in Exhibit 8 and summarized in this Report. By December 7, 1960, the then Commissioner of the R.C.M.P., C. W. Harvison, and the then Assistant Commissioner, G. B. McClellan, had become so concerned with the matters revealed in the investigation that they sought an appointment with The Honourable Mr. Fulton and saw him that day. At that conference the two officers of the Force revealed to the Minister verbally all the contents of Exhibit 8. Thereafter, returning to his office, the Commissioner immediately instructed that these revelations to the Minister be put in the form of a report. Exhibit 8 was prepared and the same two officers re-attended the Minister on December 12.

Much examination and debate took place as to whether the document that the two delivered to The Honourable Mr. Fulton was Exhibit 8 or some other and shorter document. In my view, that issue is unimportant as The Honourable Mr. Fulton has testified that the then Commissioner Harvison acquainted him with all the salient points in the investigation to that date and that, in turn, when he saw The Right Honourable Mr. Diefenbaker on December 12, 1960, bringing with him the document which Commissioner Harvison had delivered that day, he repeated to the then Prime Minister all these facts.

Much has been said as to Exhibit 8 being such a lengthy document that it was not appropriate to deliver to the then Prime Minister. It is true that it is 31 1/2 foolscap pages in length, but it is triple-spaced with wide margins on all four sides. I tested and found I could read it

through at a normal reading rate in between 13 and 14 minutes. It must be quite usual for the Prime Minister to find that he is required to read much longer documents. If the matter is important, I am ready to find as a fact upon the positive testimony of both Mr. Harvison and Mr. McClellan and the notation on the face of the original Exhibit that it was Exhibit 8 which these two handed to The Honourable Mr. Fulton on December 12, 1960, and I feel the latter's doubt on the point is merely the result of an unsuccessful attempt to carry his memory back five and a half years.

The R.C.M.P. continued to report developments to The Honourable Mr. Fulton and on some date close to February 16, 1961, Commissioner Harvison reported to him the events surrounding Mrs. Munsinger's departure for Germany on February 5, 1961.

No further report was made to the Minister until January 30, 1963. At that time, either as a result of instructions from The Honourable Mr. Fleming, the then Minister of Justice, or of their own volition, being concerned with what they regarded as a continuing security risk, Commissioner Harvison and Assistant Commissioner McClellan attended the then Minister of Justice and delivered to him Exhibit 10. This Exhibit is in two parts, the first being a synopsis of the information contained in Exhibit 8, and the second being a statement commencing with the notation "...subsequently the following information was provided verbally to Mr. Fulton." The first part of Exhibit 10 is the exact counterpart of the first part of Exhibit 9, i.e., the only part submitted in writing in December 1960, which in turn was, as I have said, a synopsis of the material contained in Exhibit 8. Former Commissioner Harvison, who retired in October 1963, has no memory of having taken Exhibit 9 to the Honourable

Mr. Fulton or having it delivered, but does remember that he instructed its preparation. Commissioner McClellan is certain Exhibit 9 was delivered to The Honourable Mr. Fulton but also has no exact memory of the circumstances. As I have said, the issue again is unimportant. All the information in Exhibit 8 was transmitted to The Honourable Mr. Fulton, first verbally and then in writing, whether by the delivery of Exhibit 8 or Exhibit 9, or more probably both. All the information in Part II of Exhibit 10 was given to The Honourable Mr. Fulton verbally and then in writing to The Honourable Mr. Fleming.

The Honourable Mr. Fulton has testified that he instructed the R.C.M.P. officers to continue to report. The officers both testified that, whether instructed or not, they would have continued to do so and they did, as I have outlined above. Both officers testified that they received no instructions from him or any member of his Department, asking them to investigate further any matters referred to in their reports. Both officers have similarly testified that no further instructions were received from The Honourable Mr. Fleming after the delivery to him of Exhibit 10.

In fact, further action was taken by the R.C.M.P. following December 12, 1960. I have already referred to the conference between officers of the Force and Dr. Davidson on December 16, 1960, as shown in Dr. Davidson's memorandum of December 27, 1960, contained in the Immigration file, and in a memorandum by the then Corporal Shorey dated December 16, 1960, marked as Exhibit 29, before this Commission. This conference related to the attempt to procure a bar to Mrs. Munsinger's re-entry into Canada when she left in December 1960. Security investigations continued as before. The Munsinger file, Commissioner Harvison testified, was kept

as an open file; Exhibit 27 includes a letter from Inspector J. E. M. Barrette to Mr. Duggan, the Registrar of Canadian Citizenship, dated October 20, 1961, and there was the conference with The Honourable Mr. Fleming on January 30, 1963. Commissioner McClellan gave graphic testimony as to the reason for this.

" A. Well, sir, if this had been an espionage case, long experience would indicate to both Harvison and myself, simply because the woman had left the country would by no means mean that the case had concluded and we theorized, as you have to do in security cases, on the possibility Mr. Sevigny had been compromised and might have succumbed to being compromised, and still might be—and I make it clear again I am theorizing, sir—might have been in contact with agents of the Russian intelligence service, because it is a fact that an agent may be directed and operated for a period of time by one member of the Russian intelligence service who may be replaced by another at a later date. This has happened on numerous occasions in this country.

To go back to the beginning, if I were writing a text book of instructions on an espionage case and I wanted to dream up a classical case—one which, unless you were very fortunate, as an intelligence officer you would likely encounter—we were faced with a situation in which a woman who was known to us from reliable sources to have been an agent of the Soviet Intelligence Service, who had been turned down for entry into this country under her maiden name and had, in some manner unclear to us, managed to get into the country under another name and had achieved an association with the associate Minister of one of our most vital departments, the Department of National Defence; now, those were the circumstances and it is a classical type of case.

Now, the mere fact that this woman had left the country in February 1961 was certainly no indication—and there is a great deal of experience to back this up—that if indeed he had been compromised, the case was over by any manner of means.

This was our concern. We had no knowledge as to what, if any, action had been taken. We had no knowledge whether our new Minister was aware of this particular situation. We were discussing security matters with him on various occasions which presumably he might well have discussed with the Minister in question and our concern was just that—had he been told or had he not been told?

"

I am, however, of the opinion that, once having reported a situation which revealed that there might have been a security risk involving a Member of the Cabinet, the R.C.M.P. would have no mandate to proceed with further investigation of the conduct of that Member without specific instructions from the Government conveyed properly through the Minister of Justice. The R.C.M.P. are not and, so far as I have been able to discover, never have attempted to be a body investigating the personal conduct of any Minister or any Member of Parliament. That is not their business. It must be remembered clearly that such investigation as was carried on of any Member of the Cabinet in 1960 was only incidental to the investigation of the Munsinger affair. The R.C.M.P. were brought into that affair only upon her application for Canadian citizenship, and brought in then in perfectly routine fashion to check the security phase of her application. When the investigation by the Force showed possibility of a security risk, the two top officers reported promptly, tersely and exactly to the Minister and, on the appointment of a new Minister, being of the opinion that the risk might continue, repeated such report. Less they could not have done. More they could not be required to do without specific instructions from their superiors.

Insofar as the Munsinger case is concerned, and it is the matter referred to me, I can find no criticism whatsoever of the R.C.M.P. The action of the Force was efficient, prompt and discreet. I have not commented on techniques of investigation employed. As I have pointed out, any such consideration would more appropriately be the task of the future Royal Commission on Security Measures generally.

14. The Cabinet Directives as to Security

The last Cabinet Directive on this topic, No. 35, was filed as Exhibit 14. A book entitled "Security Information in the Public Service of Canada", dated November 1956, and a Memorandum to Deputy Agencies and Heads of Government, dated December 27, 1960, were filed as Exhibit 15. These documents would appear to contain the general rules as to security matters in effect in the public service at that date. As will be understood, neither document refers to the position of a Cabinet Minister. They have been useful to me in considering the care with which "classified information" was handled and the careful and exact procedure used in the guarding against the existence of security risks in the public service. It has been my opinion that standards, and indeed procedures, there outlined must be considered the very minimum to be applied in the case of a Cabinet Minister who almost hourly deals with classified information.

I have contemplated the creation of a similar code especially applicable to the Members of the Cabinet. The existence of such a document would have lightened the task of this Commission. That, however, is not a valid gauge of the need for such a code and other and more important factors lead me to conclude that the creation thereof would be of doubtful desirability. There is such a wide area of contact by Members of the Cabinet with security matters that, to attempt to regulate them clearly by way of a set written code, might well result in the creation of an

inefficient procedure. After all, the prevention of security risks is, as is stated in the above book in paragraph 4, "...a matter of initiative, vigilance and common sense exercised by all persons who are permitted to have access to classified information." A Prime Minister should be able to expect those qualities in any Member of his Cabinet even if not a word of a regulation ever appeared on paper. The exaction by the Prime Minister from his colleagues of the exercise of these qualities, particularly in security matters, and the making of decisions in accordance with the firmly established principle that all doubt must be resolved in favour of national security, would seem to be sufficient without the creation of any written code. It is perhaps significant that the latter principle was stated succinctly in Cabinet Directive No. 29, Exhibit 11, which was in effect in 1960, at the end of paragraph 6 thereof as follows:

"When, after such an examination, a continuing doubt of loyalty or reliability remains in the mind of a reasonable man and when national security is involved, that doubt must be resolved in favour of the state."

A word should be said as to the oath of Members of the Privy Council, the form of which was marked as Exhibit 17 before this Commission. A careful reading of that oath would seem to indicate that, by it, the Member must keep secret all things treated, debated and resolved in Privy Council but that it does not speak of other secret matters which might come to his knowledge. It might be as well to consider an amendment of the form of oath.

15. Procedure in Reference to the Commission

Early, in discharge of my duties as directed by the Privy Council Order, I determined that I would exercise the power conferred by section 4 of the Inquiries Act to require the attendance of such persons as I deemed proper to give testimony before the Commission. After careful consideration, however, I determined that Members of the Privy Council should be an exception to that rule. I did not deem it proper to require such Members to give evidence as to the discharge of their duties as such, whether or not they were presently Members of Parliament or of the Cabinet. I determined, on the other hand, to state to each such Member of the Privy Council, who appeared to be concerned with the matters referred to me, that his or her testimony and/or submissions would be received if and when he or she indicated that was intended. On April 6 and 7, 1966, my letters to such effect were despatched to The Right Honourable Mr. Diefenbaker, The Honourable Mr. Fulton, The Honourable Mr. Hees, The Honourable Mr. Sevigny and The Honourable Mrs. Fairclough, former Members of the Cabinet, Mr. Gaston Levesque, The Honourable Mr. Sevigny's Executive Assistant, and to The Honourable Mr. Cardin, the present Minister of Justice, or to their counsel in each case when such counsel had previously notified me of his retainer.

In order to permit me to acquaint such Members of the Privy Council with the situation, I held an in camera session of the Commission

on April 6, 1966. The reason for its in camera character may be understood when it is realized that there were produced as Exhibits at such hearing Exhibits 8, 9 and 10, R.C.M.P. reports marked "Top Secret", and Exhibits 11 to 15, Cabinet Directives, also confidential. Throughout Exhibits 8 to 10, inclusive, there was reference to sources of information and techniques of investigation which, I was urged by the R.C.M.P., should be kept in utter confidence. Therefore, counsel for this Commission prepared a synopsis of these three documents which eliminated references to those elements and the names of persons whose conduct I did not deem to be the subject of the reference to me in the Privy Council Order. A copy of that synopsis was sent to each of the Members of the Privy Council I have named and also to Mr. Gaston Levesque, whose name appeared therein on several occasions. Each of them was also notified that the hearings of this Commission would resume on April 18.

Hearings of the Commission were resumed on that date. Counsel appeared for The Right Honourable Mr. Diefenbaker and for The Honourable Messrs. Fulton, Hees and Cardin. Counsel for the first three strenuously argued to have the hearings continue, as they were at that moment, in public. In the light of the circumstances that I could not see how examination of the witnesses could proceed without reference to the classified information filed as Exhibits at the first session, I directed that the hearing proceed in camera, but I expressed the opinion that so much of the sessions of the Commission as security permitted should be held in public. Later, counsel were able to work out a modus operandi whereby, when matters necessarily entailing an examination of techniques of investigation by the Police, sources of information to the Police, or Cabinet Directives were to

be the subject of examination, I would be informed so that I might put the session in camera. Thereafter two short in camera sessions were held, on May 10, 1966 and May 18, 1966, respectively, but the other sessions of the Commission took place in public.

The synopsis of Exhibits 8, 9 and 10 was used by his counsel in the examination of The Honourable Mr. Hees and reference made to parts thereof by citing paragraph number. The synopsis was therefore marked as Exhibit 20. I directed that Exhibit 20 should not be made public when it was filed. Counsel for The Right Honourable Mr. Diefenbaker and The Honourable Mr. Fulton requested this course as he was about to cross-examine the R.C.M.P. in reference thereto. After all Members of the Privy Council who intended to give evidence had done so, i.e., when all had had an opportunity to deal with any statement in Exhibits 8, 9 and 10, or the synopsis of them, Exhibit 20, I permitted the latter Exhibit to be made public. It appeared to me appropriate to do so as it set out the information given to the Minister of Justice in 1960 and by him transmitted to the then Prime Minister. It was the task of this Commission to consider the handling of the case by those two Cabinet Ministers based on that information. When the subject of it being made public was finally disposed of, the only comment made by counsel for The Right Honourable Mr. Diefenbaker and The Honourable Mr. Fulton was that it was not evidence. I then agreed, and now agree, that Exhibit 20 was not evidence—indeed, its basic materials, Exhibits 8, 9 and 10, were not evidence of the statements made therein. I said then, and I say it now, it was a "handy document" to show the information given to these two Cabinet Ministers and which they were bound to consider in coming to a decision as to the action which must be taken,

to assist counsel in their submissions, and to assist me in the preparation of the Report. It is not my intention to comment as to whether the statements therein were accurate and the whole truth. Even less is it my intention to consider comments on those contents not made before the Commission in testimony or argument.

In this matter, it should be noted that under the Privy Council Order creating this Commission it is provided that the procedure to be followed should be in the absolute discretion of the Commissioner, including the power to hold the sessions in camera and to adopt such other procedures as the Commissioner considers appropriate for the protection of the security of Canada. A Commission so empowered was presided over by The Honourable Mr. Justice Robert Taschereau and The Honourable Mr. Justice R. L. Kellock, who reported on June 27, 1946, after having been directed "to investigate the facts relating to and the circumstances surrounding the communication, by public officials and other persons in positions of trust of secret and confidential information to agents of a foreign power." At page 683 of their report, the Commissioners outlined their position as follows:

" In the first place such a Commission is a primary institution, though of a temporary kind, and is upon a formal equality with the other institutions of the State such as the Courts, Houses of Parliament and Privy Council. Reference may be made to Clokie & Robinson 'Royal Commissions of Inquiry' (1937) pp. 150, 151.

While it is sitting, and until its existence terminates, it is not subordinate to any body. It is independent in every sense. It is not subject to, or under the control of the Courts. Its function is to conduct the investigation committed to it and to make its report to the Governor in Council. Its report is not subject to review by any Court, nor is it subject to appeal.

The Commission's findings are as authoritative as those of any Court, and, as it is the sole judge of its own procedure, and may receive evidence of any kind in its discretion, it is sometimes in a better position than a Court subject to strict rules as to the admissibility of evidence, to ascertain facts."

It was in consideration of this view of my position and for the reasons which I have outlined that I directed the holding of the first in camera session, the preparation of Exhibit 20, the withholding of it from publication until all interested parties had an opportunity to testify, and its eventual release.

16. Contempt

This leads me inevitably to the subject of contempt. Although I agree with submission of counsel that this Commission is to inquire into certain circumstances and to report, I am of the opinion that the direction in the Privy Council Order "...and to consider such other matters as may appear to the Commissioner to be relevant and to report thereon" entitles me to make suggestions as to some matters concerning Royal Commissions generally. Therefore, I have included this Section and the following one entitled "Section 13 of The Inquiries Act" as well as the above Section as to "Cabinet Directives".

I have read with interest the "suggestion" appearing at page 137 of Chief Justice Dorion's Report of the Special Public Inquiry 1964. I hasten to add that I had no experience whatsoever of any contempt in my presence. Indeed, the very opposite is true and I shall attempt hereafter to set forth my appreciation of the co-operation offered by those who appeared in any capacity before this Commission. As to contempt, or to be more accurate, words and conduct which, had I been sitting in court, would most certainly have been contempt, occurring outside my presence, I have mixed views. However unpleasant a Commissioner may find such developments, he must remember he is not a "court". Criticism of not only the Commissioner's findings but of his method of arriving at them should not be curbed, whether those criticisms are made in Parliament or even in public

addresses. It is part of the democratic process and, in my personal opinion, Commissioners, much as they may dislike it, have and should have to rely on ordinary and particularly professional good manners and the rules of proper procedure in Parliament.

If I may suggest the eloquent words of Lord Atkin in Ambard vs. Attorney-General for Trinidad and Tobago (1936) A.C. 322, when he said:

" But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

are applicable as well to criticism of the discharge by a Commissioner of his duties under a Commission of Inquiry.

17. Section 13 of The Inquiries Act

As may be gathered from the foregoing, the interpretation and application of this section which reads:

"13. No report shall be made against any person until reasonable notice has been given to him of the charge of misconduct alleged against him and he has been allowed full opportunity to be heard in person or by counsel."

has presented very considerable difficulty. An interesting statement as to its origin appears in Mr. Watson Sellar's article entitled "A Century of Commissions of Inquiry", 25 Canadian Bar Review, p. 1, where at p. 6 dealing with the consideration of present sections 12 and 13 of the Act in parliamentary debates he stated:

" On January 18th the Minister of Justice proposed, in lieu of the Pugsley amendment, that the text be:

'The commissioners may allow any person whose conduct is being investigated under this Act, and shall allow anyone against whom any charge is made in the course of such investigation, to be represented by counsel.'

Mr. Doherty's explanation was:

'This differs from the amendment proposed by my hon. friend to this extent. It gives the absolute right to anyone against whom any charge is made in the course of the investigation to be represented by counsel, and gives discretion to the commissioners to authorize any one whose conduct is being investigated to employ counsel.'

Thereupon Mr. Pugsley withdrew his amendment, and the text is now section 12 of the act. Complementary section 13 was added

without discussion. It reads:

'13. No report shall be made against any person until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel.'

This was unfortunate, because the word 'misconduct' might have been improved upon. It is an apt expression so far as civil servants are concerned. Related to them it connotes offences, conduct which is negligent or reckless and acts of political partisanship—to a legislator it is wholly desirable that there be political partisanship, so long as the individual is not on the public payroll. Then it is a statutory offence."

Mr. Sellar seemed to take the same broad view of the word "misconduct" as I have adopted in this Report. My difficulty with Section 13 is that it may be interpreted to cast the Commissioner in a dual and a contradictory role. It is the essence of his duty to consider impartially the evidence adduced and the submissions of counsel based thereon. That judges are expected, because of their training and tradition, to be able to make such an impartial survey of evidence and argument is surely the chief reason why they have been so generally appointed as Commissioners. After some sixteen years on the bench, I find such a task natural.

Yet the section, it has been submitted by some counsel, would appear to require the Commissioner to come to, at least the tentative conclusion, that a person had committed some misconduct, notify such person of such "charge of misconduct alleged against him" and permit him to be heard thereon in person or by counsel. Indeed, it was the submission of one counsel that I, as Commissioner, was required to draft this "notice [to] be given of the charge of misconduct alleged against him" and that requires, in my respectful submission, that charge must be clearly specified beforehand so he may have a proper opportunity to prepare his defence. I refused at

that early stage, when I had heard only the preliminary evidence and there had not been any cross-examination thereon, to indicate any "charge of misconduct" which I was prepared to allege against anyone. Later, when all evidence had been adduced and all counsel then remaining before the Commission had made submissions, I took the steps outlined above in the Section entitled "Procedure in Reference to the Commission". That method of proceeding I chose because I interpreted section 13 as not requiring the Commissioner to make, at such stage, even a tentative finding, but as requiring him to state to any person a "charge of misconduct" alleged by others, and almost inevitably by counsel, against such person. A Commissioner does not allege but rather finds and reports.

Interpreted in this manner, section 13 permits a Commissioner to retain his character of impartiality until all evidence has been adduced and every person has had a complete opportunity, on the fullest notice, to "be heard in person or by counsel". Yet the strenuous attempt to require me as Commissioner to adopt the role of accuser early in the proceedings and the most forceful criticism of the procedure I adopted on April 6, 1966, and which I have outlined above, illustrates that section 13 should be clarified so that its proper purpose, in my view, should be preserved and that it not be utilized to impair the position of impartial investigator which a Commissioner must occupy. It is not my duty to suggest the form of an amending provision but it should be made plain that what the Commissioner or his Secretary is required to notify a person of is the "charge of misconduct alleged" against him by others who have made that allegation before the Commission, not any tentative conclusion the Commissioner may be said to have formed.

18. Costs

There have been some rather vague suggestions that I should make some recommendation that certain counsel fees should be paid by the Government of Canada. Apart from my recommendation made to the officials of the Privy Council Office when I appointed counsel for this Commission, I make no other recommendations.

19. Witnesses Before the Commission

As Appendix 2, I have listed the witnesses who gave testimony before the Commission, and in Appendix 3 I have listed the counsel who appeared and have indicated their clients in each case.

Counsel for the Commission considered with me a large number of other avenues of investigation and a number of other persons who might have been requested or summonsed to give testimony. I have in the "Introduction" to the Report outlined what I conceived to be the main task of this Commission. In view of that task, I determined that the accuracy of the reports made by the R.C.M.P. to the then Minister of Justice, The Honourable E. Davie Fulton, was not an issue. Only the fact that such reports were made and that the course of dealing with them, which I have outlined, was adopted, were relevant. On this basis I deemed it unnecessary to request or require a certain number of persons whose names appeared in the R.C.M.P. reports to testify. Their testimony, as I have said, would have been irrelevant and it might well have resulted in unnecessary and irreparable harm to their reputations. Therefore, they were not requested to testify.

Later during the hearings it appeared possible that the then Prime Minister, The Right Honourable Mr. Diefenbaker, might have been influenced in the course he adopted by statements made to him which were at variance with the R.C.M.P. reports. The testimony of The Honourable

Mr. Sevigny's Executive Assistant, Mr. Gaston Levesque, therefore, became relevant. That testimony was given before the Commission and, in my view, it was very important as it confirmed the R.C.M.P. report and as the facts testified to therein could very easily have been elicited by questioning Mr. Levesque in 1960.

Other testimony by various other persons, whose names need not be mentioned, could have been received. In each case, what such persons might have said was considered and rejected, either because it was irrelevant, or not reliable, or of too slight value. I was then, and am now, of the opinion that I have had an opportunity to hear and consider all the relevant available evidence of any weight.

20. Acknowledgments

My duties as Commissioner I have found far from light. It would have been impossible to have discharged them without the most valuable assistance of counsel for the Commission, Mr. John L. O'Brien, Q.C., and Mr. John J. Urie, Q.C. Their vigour, penetrating intelligence and lucidity of expression have been of invaluable aid and I am most grateful to them both. I wish also to acknowledge the co-operation and courtesy of counsel who appeared for all parties. The hearings of the Commission, despite the contentious matters considered, were unmarred by any unseemly wrangling and all counsel proceeded to quietly and efficiently discharge their duties in a manner strictly in accord with the noble traditions of their, and my, profession.

Mr. J. J. Pierre Benoit, as Secretary and Registrar of the Commission, and Mr. H. A. Wilson as Executive Secretary and Security Officer, have discharged their duties with efficiency and despatch. To them and to the secretarial and clerical staff who worked so splendidly with me, I wish to express my grateful appreciation.

P.C. 1966-482



CANADA

PRIVY COUNCIL

Certified to be a true copy of a Minute of a Meeting of the Committee
of the Privy Council, approved by His Excellency the Governor
General on the

14th March 1966.

The Committee of the Privy Council, on the recommendation of the Prime Minister, advise that The Honourable Wishart Flett Spence, Ottawa, Ontario, be appointed a Commissioner under Part I of the Inquiries Act to inquire fully into a statement by the Minister of Justice in a letter dated March 11, 1966, to the Prime Minister, with reference to a case involving one Gerda Munsinger, which was read in the House of Commons on March 11, 1966; into all statements concerning the case in the House of Commons on March 4 and March 7, 1966; and into all statements by the Minister of Justice in a press conference on March 10, 1966, which, among other things, included statements about involvement with the said Gerda Munsinger, about failure to seek the advice of the Law Officers of the Department of Justice, that there were circumstances that may have constituted a risk to the security of Canada and that the case was not properly handled; and to enquire whether the case was handled in accordance with the rules and principles normally applicable to persons having access to classified information, and into all the relevant circumstances connected therewith, and in particular but without limiting the generality of the foregoing to consider fully all reports submitted to the government or any member of the government of the day and any evidence laid before them in connection therewith and any further evidence elicited by or laid before the Commissioner and to consider such other matters as may appear to the Commissioner to be relevant and to report thereon.

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The Committee further advise:

1. that the procedure to be followed be in the absolute discretion of the Commissioner, including the power to hold the sessions in camera and to adopt such procedures as the Commissioner considers appropriate for the protection of the security of Canada;
2. that the Commissioner be authorized to exercise all the powers conferred upon him by section 11 of the Inquiries Act;
3. that the Commissioner be authorized to sit at such times, and at such places as he may decide from time to time;
4. that the Commissioner be authorized to engage the services of such counsel, staff and technical advisers as he may require at rates of remuneration and reimbursement approved by the Treasury Board; and
5. that the Commissioner report to the Governor in Council with all reasonable despatch.

R. G. Robertson,
Clerk of the Privy Council.

Witnesses Who Testified Before the Commission

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Counsel Who Appeared Before the Commission

<u>Counsel</u>	<u>Client</u>
John L. O'Brien, Q.C.	The Commission
John J. Urie, Q.C.	The Commission
C. F. H. Carson, Q.C.)	
C. L. Dubin, Q.C.)	Until (The Right Honourable John G. Diefenbaker
J. R. Houston, Esq.)	May 18, (
	1966 (The Honourable E. Davie Fulton
E. A. Goodman, Q.C.)	
L. H. Schipper, Esq.)	The Honourable George Hees
A. J. Campbell, Q.C.	The Honourable Lucien Cardin
Jules Dupré, Q.C.	The Honourable Pierre Sevigny
Louis P. de Grandpré, Q.C.)	
Marc Beauregard, Esq.)	Gaston Levesque, Esq.
A. S. Pattillo, Q.C.	The Honourable Donald M. Fleming

